72 Ap 25. argued

Decree, Nov. 29, 25

Remitted - 55: Aug 58

interlocutory answers 11, 12.

15

TRANSCRIPT OF RECORD.

72 Ap 29 a. Clifford

SUPREME COURT OF THE UNITED STATES.

No. ~~377.~~ 173

THE STEAM-TUG "R. L. MABEY," ETC., JOHN CALDWELL, EXECUTOR, AND RACHEL CORWIN, EXECUTRIX, ETC., APPELLANTS,

vs.

JOSHUA ATKINS AND EDWIN ATKINS, OWNERS OF THE SHIP "ISAAC F. CHAPMAN."

No. ~~378.~~ 174

THE SHIP "HELEN R. COOPER," HER TACKLE, ETC., THE UNION NAVIGATION COMPANY, CLAIMANT, APPELLANTS,

vs.

JOSHUA ATKINS AND EDWIN ATKINS, ETC.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED DECEMBER 10, 1870.

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72 Ap 25. Argued

Dunbar, Rec'd 39, 25

Remitted - 55 Aug 58

incorporated answers 11, 12.

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1 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 19th day of September, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Charles L. Benedict, district judge.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER," &C., & THE Steam-tug "R. L. Mabey," &c.

The libellants appear and file their libel against the above-named vessels, in the words and figures following, to wit:

2

3 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel and complaint of Joshua Atkins and Edwin Atkins, owners of the ship Isaac F. Chapman, against the ship "Helen R. Cooper," her tackle, apparel, and furniture, and the steam-tug "R. L. Mabey," her engine, tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That they are, and at the times hereinafter mentioned were, the owners of the ship "Isaac F. Chapman," a registered vessel of the United States.

Second. That, on the 17th day of February, 1866, the said ship "Isaac F. Chapman" was lying in the port of New York, moored to pier 45 East River, on the upper side of the pier, having on board a cargo of merchandize, ready for sea, and bound for the port of Antwerp, the weather being fair, with moderate breezes from the westward, and the tide being ebb, running with a strong current, and the river
4 being so much obstructed with ice that it was not safe to go to sea under the circumstances. And at about two o'clock p. m., the steam-tug "R. L. Mabey" came rapidly down the tide, close along the end of the piers, with the ship "Helen R. Cooper," of New York, in tow with a long hawser, and went alongside the end of said pier 45, when, by the slacking of said hawser, and by the negligence of those in charge of said tug and of those in charge of said ship, the said ship "Helen R. Cooper" was allowed to run into the said ship "Isaac F. Chapman," striking her near the main rigging and cutting her down to the water's edge, carrying away her backstays, misen stay, and smashing her boats, starting the deck, and doing other damage, and disabling the said ship "Isaac F. Chapman" so that she could not proceed to sea without expensive repairs and long delay.

Third. That the said ship was moored to the pier, inside the slip, entirely helpless and unable to prevent or to avoid said collision, which was wholly attributable to the negligence of those in charge of said tug and those in charge of said ship "Helen R. Cooper," or of those in charge of one of the said vessels, in going to sea under the cir-
5 cumstances; in proceeding with such rapidity; in towing with so long a line or hawser, instead of alongside; in proceeding along shore so close in by the ends of the piers, contrary to the act in

relation to the navigation of the East River by steamboats; in sheering or permitting to sheer said ship "Helen R. Cooper" inside the line of the pier-heads; and, generally, in allowing said ship "Helen R. Cooper" to run into and against the said ship "Isaac F. Chapman," and in allowing her to injure said ship, her tackle, apparel, and furniture, and to hinder and delay her in proceeding on her said voyage; whereby the libellants were damaged, including damage to cargo, of which they were common carriers, to the amount of eighteen thousand five hundred dollars and upwards, besides interest, which the said vessels have neglected to pay.

Fourth. That all and singular the premises are true, and within the jurisdiction of this court.

Wherefore the libellants pray that *that* process, in due form of law, according to the course of this court in causes of admiralty and
6 maritime jurisdiction, may issue against the said ship "Helen R. Cooper," her tackle, apparel, &c., and the steam-tug "R. L. Mabey," her engine, tackle, &c., and that all persons having any interest therein may be cited to appear and answer on oath the matters aforesaid; and that this court will decree the payment of the damages sustained by the libellants, hereinafter to be ascertained under the order of this court; and that the said ship and said tug may be condemned and sold to pay the same, with interest and costs; and that the libellants may have such further and other relief in the premises as they may be entitled to receive.

JOSHUA ATKINS.

Sworn to before me this 19th day of September, 1866.
SAMUEL T. JONES,
U. S. Commissioner.

BENEDICT, TRACY & BENEDICT,
Libellant's Proctors.
E. C. BENEDICT,
Advocate.

(Endorsed:) U. S. district court, E. D. Joshua Atkins et al. against the ship "Helen R. Cooper" & the steam-tug "R. L. Mabey." Libel. Benedict, Tracy & Benedict, proct's, 76 Wall st., New York. Filed Sept. 19th, 1866.

7 *Stipulation for libellants' costs, entered into pursuant to the rules and practice of this court.—Filed the 19th day of September,* 1866.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the 19th day of September, in the year of our Lord one thousand eight hundred and sixty-six, by Joshua Atkins & Edwin Atkins, owners of the ship "Isaac F. Chapman" against the ship "Helen R. Cooper," her tackle, apparel, & the steam-tug "R. L. Mabey," her engine, tackle, apparel, furniture, for the reasons and causes in the said libel mentioned, and praying that said vessels may be condemned, sold, &c., and the said libellants and H. D. Brookman, surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of

whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named, shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

EDWIN ATKINS,
By J. ATKINS.
H. D. BROOKMAN.

Taken and acknowledged this 19th day of September, 1866, before me.

SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

Henry D. Brookman, one of the parties to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of Brooklyn and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

H. D. BROOKMAN.

Sworn to this 19th day of September, 186 , before me.
SAMUEL T. JONES,
U. S. Commissioner.

Recorded the 19th day of September, 1866.
SAMUEL T. JONES, *Clerk.*

EASTERN DISTRICT OF NEW YORK, *ss:*

8 [L. S.] The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas a libel in rem and personam hath been filed in the district court of the United States for the eastern district of New York, on the 19th day of September, in the year of our Lord one thousand eight hundred and sixty-six, by Joshua Atkins and Edwin Atkins, owners of the ship "Isaac F. Chapman," against the ship "Helen R. Cooper," her tackle, apparel, & furniture, and the steam-tug "R. L. Mabey," her engine, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said vessels, their tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said vessels, their tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

You are therefore hereby commanded, to attach the said vessels, their tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of New York, on the third day of October, 1866, *of the same day*, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to inter-

pose a claim for the same, and to make their allegations in that behalf. And we do hereby further empower and strictly charge and command you, the said marshal, that you cite and admonish the said respondent if shall be found within the jurisdiction of this court, that be and appear before the said district court, on the day of at the U. S. court-rooms, in the city of Brooklyn, then and there to answer the said libel, and to make allegations in that behalf; and have you then there this writ, with your return thereon.

Witness the Honorable Charles L. Benedict, judge of said court, this 19th day of September, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

SAMUEL T. JONES, *Clerk.*

BENEDICT, TRACY & BENEDICT,
Proctors for libellants.

[50-c. rev. stamp affixed & cancelled.]

9 (Indorsed:) Vol. , page . Eastern district of New York. United States district court. Joshua Atkins et al., vs. The Ship "Helen R. Cooper," & the Steam-tug "R. L. Mabey." Process in rem and personam. Ret'ble Oct. 3rd, 1866. Benedict, Tracy & Benedict, proctors for libellants. Filed Oct. 3d, 1866.

I hereby depute J. W. Higgins to execute the within process.
Dated September 25th, 1866.

A. F. CAMPBELL,
U. S. Marshal.

In obedience to the within monition, I attached the ship "Helen R. Cooper," & steam-tug "R. L. Mabey," herein described on the 25th day of September, 1866, and have given due notice to all persons claiming the same, that this court will, on the 3d of October inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

A. F. CAMPBELL,
U. S. Marshal.

Dated Oct. 3rd, 1866.

10 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Thursday, the 27th day of September, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Charles L. Benedict, district judge.

THE SCH'R "HELEN R. COOPER," HER tackle, &c.,
ads.
JOSHUA ATKINS & OTHERS.

And now the Union Navigation Company, owners of the ship "Helen R. Cooper," intervening for the interest of itself in the said ship, appears before the honorable court and makes claim to the said ship, &c., as the same are attached by the marshal, under process of this court, at the instance of Joshua Atkins & others, and the said Union Navigation

Company avers that it was in possession of the said ship at the time of the attachment thereof, and that the company above-named is the true and bona fide owner of the said ship, and that no other person is the owner thereof; wherefore, it prays to defend accordingly.

B. J. H. TRASK, *Pres't.*

Sworn to and subscribed this 27th day of September, A. D. 1866, before me.

SAMUEL T. JONES,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctor' for Claimant.

11 (Indorsed:) Vol. , No. . United States district court for the eastern district of New York. The "Helen R. Cooper," &c., ads. Joshua Atkins et al. Beebe, Dean & Donohue, proctor' for claimant. Claim of owner. Filed the 27th day of Sept., 1866.

12 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 27th day of September*, 1866.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court, on the 19th day of September, in the year of our Lord one thousand eight hundred and sixty-six, by Joshua Atkins & others, against the ship "Helen R. Cooper," &c., for the reasons and causes in the said libel mentioned, and praying that said ship, &c., may be condemned, &c., and the Union Navigation Co., & John K. Pruyn, parties hereto, hereby consenting that, in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

And whereas, also, a claim has been filed in said cause by the Union Navigation Company, as owners of the said ship "Helen R. Cooper."

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal, by the appellate court.

UNION NAVIGATION CO.
By JOHN K. PRUYN.

Taken and acknowledged this 27th day of September, 1866, before me.

SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

John K. Pruyn, one of the parties to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

Sworn to this 27th day of September, 1866, before me.

SAMUEL T. JONES,
U. S. Commissioner.

Recorded the 27th day of Sept., 1866.

SAMUEL T. JONES, *Clerk.*

13 *Stipulation for value, entered into pursuant to the rules and practice of this court.—Filed the 27th day of September, 1866.*

District court of the United States for the eastern district of New York.
In admiralty.

Whereas a libel was filed on the 19th day of September, in the year of our Lord one thousand eight hundred and sixty-six, by Joshua Atkins & Edwin Atkins, libellants, against the ship "Helen R. Cooper," &c., and the steam-tug "R. L. Mabey," &c., and praying that said vessels may be condemned, &c., for the reasons and causes in the said libel mentioned; and whereas the said ship "Helen R. Cooper" is now in the custody of the marshal, under the process of this court, issued in pursuance of the prayer of said libel; and whereas a claim thereto has been filed by the Union Navigation Co., as owners of said ship; and whereas the value of said vessel is by consent fixed at twenty thousand dollars, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimants above named or their surety, execution for the above agreed value, with interest thereon from this date, may issue against their goods, chattels, and lands.

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said district court or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Beebe, Dean & Donohue, esquires, proctors for the claimants of said ship, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

UNION NAVIGATION CO.,
By B. J. H. TRASK, JR., *Pres't.*
JOHN K. PRUYN.

Taken and acknowledged this 27th day of September, 1866, before me.
SAMUEL T. JONES,
U. S. Commissioner.

14 EASTERN DISTRICT OF NEW YORK, *ss:*

John K. Pruyn, one of the parties to the above stipulation, being duly sworn, deposes and says that he resides in the city of Brooklyn, and that he is worth the sum of forty thousand dollars, over and above all his just debts and liabilities.

JOHN K. PRUYN.

Sworn to this 27th day of September, 1866, before me.
SAMUEL T. JONES,
U. S. Commissioner.

Recorded this 27th day of September, 1866.
SAMUEL T. JONES, *Clerk.*

The form and sufficiency of the above stipulation is approved—the value of the ship being fixed by consent at $20,000—and we consent that the vessel be discharged from custody, this stipulation to stand in place thereof.

Dated September 27th, 1866.
BENEDICT, TRACY & BENEDICT,
Lib'lts Proct's.

15 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Wednesday, the third day of October, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Charles L. Benedict, district judge.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER," & THE STEAM-tug "R. L. Mabey."

On reading and filing the mandate of the district judge, and on motion of Benedict, Tracy & Benedict, proctors for the libellants, it is ordered that the notice for all persons to appear and intervene for their interest in the above-entitled cause, be published by the marshal until the tenth day of October in the Brooklyn Daily Union.

CHA'S L. BENEDICT.

(Endorsed:) In pursuance of the written order I have published the notice therein directed in the manner prescribed.

A. F. CAMPBELL, *Marshal.*

16 (Indorsed:) Vol. , No. . United States district court for the eastern district of New York. Joshua Atkins et al. vs. The Ship "Helen R. Cooper" and the Tug "R. L. Mabey." Order for short publication. Filed and entered the 3d day of October, 1866.

17 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Tuesday, the 2nd day of April, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable Charles L. Benedict, district judge.

THE STEAM-TUG "R. L. MABEY," & THE SHIP "Helen R. Cooper,"
ads.
JOSHUA ATKINS ET AL.

And now Humphrey H. Crary, owner of the steam-tug "R. L. Mabey," intervening for the interest of the owner in the said steam-tug, appears before the honorable court and makes claim to the said steam-tug, &c., as the same are attached by the marshal, under process of this court, at the instance of Joshua Atkins & others; and the said Humphrey H. Crary avers that said steam-tug was in possession of the said Humphrey H. Crary, at the time of the attachment thereof, and that the person above named is the true and bona fide owner of the said steam-tug, and that no other person is the owner thereof; wherefore he prays to defend accordingly.

HUMPHREY H. CRARY.

Sworn to and subscribed this 2d day of April, A. D. 1867, before me.

CHARLES W. NEWTON,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctor' for Claimant.

18 (Indorsed:) Vol. No. . United States district court for the eastern district of New York. The Steam-tug "R. L. Mabey," & Ship "Helen R. Cooper," ads. Joshua Atkins et al. Beebe, Dean & Donohue, proctor' for claimant. Claim of owner. Filed the 2nd day of April, 1867.

19 *Stipulation, entered into pursuant to the rules and practice of this court.—Filed the 2nd day of April*, 1867.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the 14th day of September, in the year of our Lord one thousand eight hundred and sixty-six, by Joshua Atkins et al. libellants, against the steam-tug "R. L. Mabey," and the ship "Helen R. Cooper," respondents, for the reasons and causes in the said libel mentioned, and praying that sa'd steam-tug and ship may be condemned and sold, and the parties hereto hereby consenting that, in case of default and contumacy on the part of the claimant or his surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by Humphrey H. Crary, as owner of the steam-tug R. L. Mabey—

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal by the appellate court.

HUMPHREY H. CRARY.
JOS. McMURRAY.

Taken and acknowledged this 2nd day of April, 1867, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

Joseph McMurray, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOS. McMURRAY.

Sworn to this 2nd day of April, 1867, before me.
CHARLES W. NEWTON,
U. S. Commissioner.

Recorded the 2nd day of April, 1867.
SAMUEL T. JONES, *Clerk.*

20 (Endorsed:) U. S. district court, E. D. of N. Y. Joshua Atkins et al. vs. The Steam-tug "R. L. Mabey," and the Ship "Helen R. Cooper." Stip. for resp'd't's costs.

21 *Stipulation for value entered into pursuant to the rules and practice of this court.—Filed the 2d day of April, 1870.*

District court of the United States for the eastern district of New York.
In admiralty.

Whereas a libel was filed on the nineteenth day of September, in the year of our Lord one thousand eight hundred and sixty-six, by Joshua Atkins & others, libellants, against The Steam-tug "R. L. Mabey," and the Ship "Helen R. Cooper," respondent, for the reasons and causes in the said libel mentioned; and whereas the said steam-tug "R. L. Mabey" has been attached, and is now in the custody of the marshal, under the process of this court issued in pursuance of the prayer of said libel; and whereas a claim to said steam-tug "R. L. Mabey" has been filed by Humphrey H. Crary, and the value thereof has been fixed by appraisement at 5,000 dollars, as appears from said appraiser's report, now on file in said court; and the parties hereto hereby consenting, and agreeing that, in case of default or contumacy on the part of the claimant or his surety, execution for the above appraised value, with interest thereon from this date, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Beebe, Dean & Donohue, esquires, proctors for the claimant of said steam-tug "R. L. Mabey," abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

HUMPHREY H. CRARY.
JOS. McMURRAY.

Taken and acknowledged this 2d day of April, 1867, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

22 EASTERN DISTRICT OF NEW YORK, *ss:*

Humphrey H. Crary & Joseph McMurray, parties to the above stipulation, being duly sworn, depose and say that they reside in the respective cities of New York and Brooklyn; that they are each worth the sum of two thousand dollars over and above all his just debts and liabilities.

HUMPHREY H. CRARY.
JOS. McMURRAY.

Sworn to this 2d day of April, 1867, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

Recorded this day of 187 .

We approve of the form and sufficiency of the above stipulation.
APRIL 2D, 1867.

23 U. S. district court, E. D.

JOSHUA ATKINS & OTHERS,
ag'st
THE SHIP "HELEN R. COOPER," HER TACKLE, &c., and the Steam-tug "R. L. Mabey," her machinery, &c.

It is hereby consented that Messrs Emerson & Goodrich be substituted in our place as proctors for the Steam-tug "R. L. Mabey," in the above cause.

Dated April 29th, 1867.

BEEBE, DEAN & DONOHUE.

(Endorsed:) U. S. dist. c't, E. D. Joshua Atkins & al. vs. The Ship "Helen R. Cooper," &c. Consent to substitute. Filed May 1st, 1867.

24 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Wednesday, the 1st day of May, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable Charles L. Benedict, district judge.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER," & THE TUG "R. L. Mabey."

On reading and filing consent, and on motion Messrs. Beebe, Dean & Donohue, proctors for the claimants of the "R. L. Mabey"—

Ordered, That Emerson Goodrich, esqs., be, and they hereby are, substituted as proctors for the claimants of the said steam-tug "R. L. Mabey."

CHA'S L. BENEDICT.

25 (Indorsed:) Vol. , No. 2. United States district court for the eastern district of New York. Joshua Atkins & others vs. The "Helen R. Cooper" & the "R. L. Mabey." Order. , proctor for . Filed and entered the 1st day of May, 1867.

26 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of the Union Navigation Company, owners of the ship "Helen R. Cooper," to the libel and complaint of Joshua Atkins and Edwin Atkins, alleged owners of the ship "Isaac F. Chapman," against the ship "Helen R. Cooper," her tackle, apparel, and furniture, and against the steam-tug "R. L. Mabey," her engine, tackle, apparel, and furniture, in a cause of collision, civil and maritime; and thereupon the respondents allege and articulately propound as follows:

First. The respondents have no knowledge or information whereon to found a belief as to the matters contained in the first article of the said libel, and leaves the libellants to make such proof as they shall be advised it is material or necessary to make.

Second. The respondents deny each and every allegation contained

in the second article of the said libel, except where the same is hereinafter admitted.

Third. The respondents deny each and every allegation contained in the third article of the said libel, except where the same is hereinafter admitted.

27 Fourth. These respondents say that, on the day mentioned in the second article of the said libel and complaint, the said ship "Helen R. Cooper" was lying at the gas works, in the city of Brooklyn, and bound to Apalachicola, for a cargo of cotton, having her crew and a Sandy Hook pilot on board; that while so lying, the steam-tug "R. L. Mabey" came to the "Helen R. Cooper" for the purpose of towing her to sea; that, by the direction of the pilot, the said steam-tug took the said ship in tow by hawser; that at the time the said steam-tug took hold of the said ship she was lying at the wharf of the gas works, with her bows up the wharf, and her stern out, and the hawser was made fast to her bows on the port side of the ship, and passed along aft, and there made fast by stops, and the said ship was towed stern foremost into the stream, the tide having just made ebb; that, as the said ship passed out into the stream, the stop at the stern was cut, so as to allow the bow of the ship to turn around and head down the river; that while in the act of turning, both the said ship and the said steam-tug were unexpectedly caught in

28 an immense field of floating ice, which, in spite of the said tug, set both the said ship and the said tug towards the New York shore; that, finding that the said field of ice was too powerful for the said steam-tug to control, both anchors of the said ship were let go, with a large amount of chain, notwithstanding which, the ice carried the said ship and tug across and down the river, so that the head of the said ship having finally got pointed down the river, was carried by the ice so that her bows were carried inside pier 45, and into the side of the ship "Isaac F. Chapman," and thus causing any damage that was done.

Fifth. That, at the time the said ship started on her voyage, it was under the direction of the pilot on board, and they were bound to rely upon his skill and judgement; and in fact there was, at the time the said ship was taken in tow, no such presence of ice as made it dangerous for her to start, and she could only in her then position be towed by a hawser; and that she was without motive power to control her movements, except the said tug; and those on board the said tug and the pilot were the best judges of the prudence of proceeding to sea at that time; and that the field of ice in which she became entangled was too pow-

29 erful to be controlled; and all that she could do, was to drop her anchors with a view to stop her headway; but, which being done, failed to bring her up; and the said collision was the result of inevitable accident; but, if not of inevitable accident, then certainly arose from no fault of the said ship, or her officers, or crew.

Sixth. These respondents admit the allegations contained in the fourth article of the said libel.

Wherefore the respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises; and that they may be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

UNION NAV'G'T'N CO.,
By B. J. H. TRASK, *Pres't.*

Sworn to before me this 2d day of May, 1867.

H. F. RANNEY,
Notary Public, City & County of New York.

BEEBE, DEAN & DONOHUE,
Proctors for Resp'd'ts.
BEEBE, *Advocate.*

30 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of Humphrey H. Crary, owner of the steamboat "R. L. Mabey," her tackle, &c., intervening for his interest therein, to the libel of Joshua Atkins and Edward Atkins against the said steamboat "R. L. Mabey," her tackle, &c., and against the ship "Helen R. Cooper," her tackle, in a cause of collision, civil and maritime. The said claimant alleges and articulately propounds, as follows:

First. He has no knowledge or information sufficient to form a belief as to the first article of said libel, and therefore denies the same.

Second. He admits that, about the time mentioned in said libel, a collision occurred between the ship "Helen R. Cooper" and the ship "Isaac F. Chapman," then lying on the upper side of pier 45, East River, and that the wind was blowing from the southward and the tide ebb; but he alleges that the following are the facts and circum-
31 stances connected with the same, and denies each and every allegation of said libel inconsistent therewith.

That, on the 17th day of Feb'uary, 1867, the said ship "Helen R. Cooper" was lying at the Shinbone stores, near the navy yard, in the city of Brooklyn, on the upper side of the pier, ready for sea, and the owner or agent thereof applied to the master of the "R. L. Mabey" to tow said vessel to sea, and was informed by the master of said steamboat, that it was not safe to proceed to sea in the then condition of the weather and tide; that the said agent insisted that said ship should be towed to sea, and, on behalf of said ship agreed to, and did, assume the risk of all accidents and dangers, and took aboard, and was in charge of a regular and duly-licensed pilot, obeying all his orders and commands, and using all diligence, care, and skill, in towing off said vessel.

That directions were given by said pilot to persons aboard of, or connected with *with* the said ship "Helen R. Cooper" in regard to the management thereof, which were not obeyed.

That, among the other things, the pilot gave an order to slacken,
32 but not to cast off the hawser, by which said ship was moored until her head was swung round, so as to head down stream; which order was disobeyed, the hawser being cast off before the ship was swung around as aforesaid, thus setting her over to the New York shore toward the ship "Isaac F. Chapman."

That said ship "Helen R. Cooper" was lying with her stern to the stream, and the steamboat took hold of her, and had swung her out into the middle of the stream, and had headed down stream, when the persons aboard of said ship put the helm hard aport, so that the ship made a sudden sheer to starboard, and ran over to the New York shore, and into the said ship "Isaac F. Chapman."

That owing, among other things, to the neglect of the persons in charge of said ship to obey the orders of the pilot, and to their want of care, skill, and attention, the said ship was headed over to the New York shore, swinging said steamer's stern around, and it was impossible for the said steamboat to pull the head of said ship around to port, in

order to avoid the New York shore, so that, although the steam-
33 boat was headed to Brooklyn shore, using her utmost power to pull off the said ship "Helen R. Cooper," the said ship ran into and upon the said ship "Isaac F. Chapman, while lying at pier 45, as aforesaid.

The claimant has no knowledge as to the condition of said ship "Isaac F. Chapman" before or after said collision.

He denies that the hawser, by which the ship "Helen R. Cooper" was being towed, was at any time improperly slackened, or that the persons in charge of said steamboat were guilty of any negligence, mismanagement, want of skill, or care whatever.

Third. The claimant admits that said ship "Isaac F. Chapman" was moored as alleged in the third article of said libel, but denies that the steamboat was guilty of any negligence, mismanagement, want of care, or skill, and alleges that whatever damage occurred, was occasioned solely by the negligence, mismanagement, want of care, and skill of the persons in charge of said ship "Helen R. Cooper," and were not attributable in any respect to those in charge of said steamboat.

34 He has no knowledge as to the damage sustained by the ship "Isaac F. Chapman," or the amount thereof.

Fourth. The claimant admits the fourth article of said libel.

Wherefore, the claimant prays that said libel as to him, may be dismissed with costs.

CHA'S H. FRANKLIN, JR.,
Managing Agent.

Sworn before me this 7th day of May, 1867.
[L. S.]
HENRY MORRIS,
Notary Public for Co. of New York.

EMERSON & GOODRICH,
Proctors for Claimant of Steamboat "R. L. Mabey."
WILLIAM W. GOODRICH, *Advocate.*

(Endorsed:) U. S. district court, eastern district. Joshua Atkins et al. vs. The Steamboat "R. L. Mabey," her tackle, &c., and the Ship "Helen R. Cooper," her tackle, &c. Answer. Emerson & Goodrich, proctors for claimant, 74 Wall st., New York. Filed May 8th, 1867.

35 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The amended answer of the Union Navigation Company, owners of the ship "Helen R. Cooper," to the libel and complaint of Joshua Atkins and Edwin Atkins, alleged owners of the ship "Isaac F. Chapman," against The Ship "Helen R. Cooper," her tackle, apparel, and furniture, and against the Steam-tug "R. L. Mabey," her engine, tackle, apparel, & furniture, in a cause of collision, civil and maritime. And, thereupon, the respondents, answering, allege and propound as follows:

First. The respondents have no knowledge or information whereon to found a belief as to the matters contained in the first article of the said libel, and leave the libellants to make such proof as they shall be advised it is material or necessary to make.

Second. The respondents deny each and every allegation contained in the second article of the said libel, except where the same is hereinafter admitted.

36 Third. These respondents further state that, at the time of the happening of the said collision, the said ship "Helen R. Cooper" was the property of one Benjamin J. H. Trask, and that since that time and before the filing of the libel in this action the said ship was purchased in good faith by these respondents for a full and valuable consideration.

Fourth. These respondents say, that, on the day mentioned in the second article of the said libel, the said ship was lying at the gas works, in the city of Brooklyn, and bound to Apalachicola, in ballast, and ready for sea; that she lay on the easterly side of the pier, next to the navy yard; that the said ship lay with her stem up the pier, and her stern out, and in close proximity to the bows of said ship two monitors were lying; that, while so lying, the steam-tug "R. L. Mabey" came to the said ship for the purpose of towing her to sea, having on board the crew of the ship and a Sandy Hook pilot to take the said ship to sea; that, owing to the position of the monitors the said steam-tug was unable to lash herself alongside the port side of the said ship, but,

37 in order to tow her from the pier into the stream a hawser was made fast to the bows of the said ship on the port side, and passed aft, and there made fast by stops; and the said ship was towed by the said tug out, the stoppers were cut, the tide at the time having just commenced to run ebb, so as to enable the tug to tow her head round so as to head down the stream.

That, at the time there was considerable floating ice on the Brooklyn side of the East River, but the river was clear for a considerable distance out on the New York side; that, owing to the floating ice, the ship was turned with more difficulty than it would otherwise have been; that the said tug had got the ship's head turned down the river, angling towards the New York shore, and with most of the ship in clear water, free from ice; that, while the said tug was thus successfully towing the said ship, and angling well off her port bow so as to keep her head turning down the stream, until she should head directly down, a ferry-boat suddenly and improperly crossed the bows of the said steam-tug, and in order to prevent the striking the said ferry-boat the headway of the said tug was suddenly slowed, and with the

38 impetus which the said ship had on she shot ahead towards the piers on the New York side; that, the instant the pilot discovered the steam-tug had slowed he waived them on, but she could not go on without running on the said ferry-boat; that, instantly upon the slowing of the said tug it was seen that the tug had lost, by slowing, the control of the ship. Both anchors were at once let go, they being all ready for that purpose, but, owing to the character of the ground the ship overran her anchors, and dragged them both, and she came with her stem upon the said ship "Isaac F. Chapman" thus, and doing any damage that happened to the said ship "Isaac F. Chapman," the wheel of the said ship being hard astarboard from the time the said ship left the pier up to the time of coming into contact with the said ship "Isaac F. Chapman."

Fifth. That, at the time the said ship was taken into the stream for the purpose of going to sea, it was proper and prudent so to do—several ships having gone to sea on that day—that the said ship was light, of comparatively small burthen, and easily controlled; that the tug

39 "R. L. Mabey" was a tug of great power, and a fit and proper tug to take the said ship to sea on that day; that the said ship was taken in a proper and usual manner into the stream, was properly navigated, was entirely under the control of the said steam-tug when

the said ferry-boat thus suddenly crossed the bows of the said tug and compelled her to slow, making her thus lose the control of the said ship; that the said ship, being thus robbed of her motive power, let go both anchors, which, owing to the character of the ground, could not hold her, and her coming into contact with the said ship "Isaac F. Chapman" was without fault on the part of the said ship or those navigating her.

Sixth. These respondents admit the jurisdiction of this honorable court.

Wherefore the respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises, and that they may be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

B. J. H. TRASK,
Pres. Union Navigation Co.

Sworn to before me this 11th day of October, 1867.

O. R. STEELE,
Notary Public.

40 BEEBE, DEAN & DONOHUE,
Proctors.

BEEBE, *Advocate.*

(Endorsed:) "U. S. district court, eastern dist. The Ship "Helen R. Cooper," her tackle, &c. Impleaded ads. Joshua Atkins et al. Amended answer. Beebe, Dean & Donohue, proctors for cl'm'ts. Filed October 14th, 1867.

41 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Wednesday, the 12th day of June, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable Charles L. Benedict, district judge.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER," & THE TUG "R. L. Mabey."

Cause called in the order. Ordered hearing.
Mr. Benedict appears for lib'l'ts.
Mr. Beebe for cl'm'ts of the "Helen R. Cooper."
Mr. Goodrich " " " " "R. L. Mabey."
Pleadings read.
Further hearing adj'd to June 13th, 1867.

JUNE 13TH. Hearing resumed.

Evidence for lib'l'ts:

G. O. Norton, sworn & examined.
Frank Grosseus, " " "
Libellants rest, reserving right to call other witnesses.

Evidence for claimants of the "Helen R. Cooper:"

George Burger, sworn & examined.

Thomas Aitkin, " " "
George Burger recalled.
John Johnson sworn.
Cl'm'ts of the Helen R. Cooper rest, reserving right to call witnesses on point as to prudence of going to sea.
Adj'd to June 14.

JUNE 14TH, 1867.—Hearing resumed.

Evidence for cl'm'ts of "Helen R. Cooper:"
Dep. of William H. Smith, read by Mr. Beebe.
Mr. Lyons sworn & examined.
John Hobbs " " "
42 *Clients* of "Helen R. Cooper," rest.
Mr. Goodrich offers in evidence a stip. signed by proctors, and moves to dismiss the libel as to the "R. L. Mabey." Motion dism'd.
Gustavus D. S. Trask sworn & ex'd by cl'm'ts of "Cooper." Rest.

Evidence for lib'l'ts:
John Ferrin sworn & examined.
Capt. Norton recalled.
Rest—reserving right to call other witnesses.
Capt. Johnson recalled by Mr. Beebe.
Mr. Lyons " " " "
George Burger " " " "
Mr. Hobbs " " " "
Testimony closed; summing up of evidence.
Adj'd to a day to be agreed on by counsel.

(Indorsed:) Vol. —, No. —. United States district court for the eastern district of New York. Joshua Atkins et al. vs. The "Helen R. Cooper" & the "R. L. Mabey." Extracts from minutes. proctor for . Filed and day of 187 .

43 THURSDAY, *June 13th*, 1867.

GALEN O. NORTON, a witness for libellants, being duly sworn, testified.

Examined by Mr. Benedict:

Q. What is your business?
A. Ship-master.
Q. How long have you been a ship-master?
A. Since 1841.
Q. How long have you followed the sea?
A. Well, 30 years, at least.
Q. Were you master of the ship "Chapman" at the time of this collision?
A. I was.
Q. How long had you been master of her?
A. I took charge of her the 28th day of Dec.
Q. At the time of the collision where was she lying?
A. She was lying at pier 45, East River.
Q. By Mr. BEEBE. On the east side?
A. On the east side, or upper side.
Q. By Mr. BENEDICT. Of the pier?
A. Of the pier, outside of another ship—The Knight of Snowdon.
Q. She was ready for sea?

A. Yes, sir.

Q. Had she her crew engaged?

44 A. Yes, sir.

Q. Pilot engaged?

A. Yes, sir.

Q. How did she lie?

A. She lay alongside of the "Knight of Snowdon;" her stern was a little inside. The Knight of Snowdon lay her stern about square with the pier, and my ship a little inside of her. We did that in order to keep her clear of the ice.

Q. Were you at the ship that morning?

A. I was, at 9 o'clock that morning, and gave orders to move.

Q. Then did you leave there?

A. I left there and went down to the pilot office.

Q. What time did you get back to the ship again?

A. Well, it was between 1 & 2 o'clock when I went on board the ship.

Q. Had the ship been moved during the time you were gone?

A. Yes, sir. They commenced to move her at 9 o'clock.

Q. What was the object of moving her?

A. To be ready at slack water to go to sea.

Q. When was slack water that day?

45 A. I was told by the pilot it would be slack water at 11 o'clock.

Q. Why did you not go to sea at that time?

A. It was on account of the ice.

Q. Was your ship moved, or mere slackened?

A. She was moved once her length.

Q. Out?

A. Toward the end of the pier.

Q. Then it was after she was moved, when you say she lay a little inside the Knight of Snowdon?

A. Yes, sir.

Q. She lay head in, did she?

A. Yes, sir.

Q. When you arrived at the ship, were the crew on board?

A. Yes, sir.

Q. What doing?

A. They were getting their dinner then.

Q. Did you look at the river to see how it was?

A. Yes, sir. I went out on the quarter deck when I went aboard, and I had a good view of the river, and I saw no vessel moving, and there was a great deal of ice in the river, and I saw the ship was all right, well fast.

46 Q. How was the ice on the New York side?

A. Well, from the pier I lay at, up the river for a number of piers the river was clear of ice on the New York side.

Q. How was the tide running at that time?

A. Well, the tide was running considerably strong at that time.

Q. Which way?

A. Down; it was ebb.

Q. And what is the effect of the ebb tide on the ice in that part of the river?

A. Well, it has a tendency to set the ice off from that shore.

Q. Did you remain on deck until after the collision?

A. No, sir. I stopped a little while on deck, and then I went into the cabin.

Q. What were you doing in the cabin?
A. I was looking over my papers.
Q. Sitting or standing?
A. Sitting.
Q. What next attracted your attention?
A. I heard the chains rattling.
Q. What chains?
A. Well, I did not know at the time. I started to go on deck, and, before I got out, the ship struck me.
47 What ship was it?
A. The "Helen R. Cooper."
Q. How hard was the blow?
A. Well, it was hard enough to cut the ship down to the water, 18 streaks from her plankshear, and broke all the water-way in the side, and then in between decks.
Q. Where did she hit you?
A. On the starboard side, by the main-gallant back-stays.
Q. How thick was this plank that was broken?
A. The plank on the outside is 4½ inches, and on the inside 6 inches, and the last streak she broke on the inside was 7 inches; she tore away three of the maintop-gallant back-stays.
Q. By Mr. GOODRICH. The lower streak is 7 inches?
A. The lower streak in the ship is 8 inches; the lowest she struck and carried away is 7 inches.
Q. How was she lying?
A. The "Helen R. Cooper" lay square into my ship; she made considerable of a breach into her; these planks were broken off, not bent in.
48 Q. How did she lie with reference to your direction?
A. She lay at right angles, and struck her at right angles. The starboard side of the "Helen R. Cooper" lay alongside of the end of the pier above. The pier above is shorter, and would give a ship a chance to lie in that position.
Q. Did you notice how the helm of the "Helen R. Cooper" was?
A. No, sir. I could not see from where I was.
Q. What chain did you hear rattle?
A. Well, it must have been hers, as there was no other ship in the river; it was the rattling of her chains and anchors as she let them go.
49 Q. How long did she lie in contact with you?
A. Well, I don't know how long, but it was some time. They hove up both anchors there.
Q. Where were they?
A. The anchors must have been under my ship's bottom, where they hove them up, for the chain was perpendicular.
Q. Did you know how much chain they hove up?
A. Well, I could not say; but it could not have been a great deal.
Q. By Mr. BEEBE. She overrun it?
A. No; if she had overrun her chain, the ship would have been in the stream.
Q. By Mr. BENEDICT. Did you see the anchors come out of the water?
A. Yes, sir.
Q. Who was there, when you saw them come out, representing the "Helen R. Cooper?"
50 A. Well, I don't know of any one particular, except Captain G. D. S. Trask, who is here.

Q. Did you have any conversation with him about the anchors at the time?

(Objected to by Mr. Beebe & Mr. Goodrich. Taken subject to making it appear that he occupied a position in which his conversation would bind them.)

Q. State what the conversation was.

A. When I noticed Capt. Trask, I asked him how it was his ship was in there. He said he did not know; he said the anchors were let go. I told him they could not have had any scope. He said they were let go in the river. I said, "These anchors were under my boat, and you will see when they come up," which they did. They could not have been of sufficient scope, or they would either have carried away the chains, or stopped the ship.

51 Q. How long was it before the ship got free from you?

A. Well, I don't recollect how long it was. I went down to inform my owners about the accident, and she was not clear. When I got back it was about dark that night. I know we got Mr. Poillan to plank over this broken place.

Q. By Mr. GOODRICH. It was dark before the ship got away from the Chapman?

A. No; not before she got away.

Q. By Mr. BENEDICT. The question is, how long before the Chapman got free from her?

A. I can't say how long it was, but it was not long before it was clear enough to get a stage in.

Q. Do you mean half an hour or two hours?

A. Well, about half an hour or an hour.

Q. What was the time when the accident occur'ed?

A. It was 15 minutes past 2.

Q. How do you know?

A. I know it by the time.

52 Q. Did you have occasion during that day to notice the shipping in the river?

A. Yes, sir; I did.

Q. Did you see any other vessels moving that day?

A. I did not see any other vessels move that day but the "Helen R. Cooper."

Q. What day of the week was that?

A. That was Saturday.

Q. Did you see the "Helen R. Cooper" go to sea?

A. I saw her Sunday morning. I went over to my ship, and saw her somewhere off Wall-street ferry, going out then.

Q. In your judgement was it prudent to attempt to go to sea that day?

A. No, sir. I did not consider that it was. In the morning, when I came across to the ship, I did not think there was any possible chance of going to sea that day; but I went aboard the ship to have her ready in case we could go out at slack water, and it was done. The crew was there, and I went down to the pilot office—

(Objected to by Mr. Beebe.)

53 Well, the pilot was ordered aboard, and was there to be ready to go to sea at slack water, but it was not considered safe to go to sea—

(Objected to.)

I was ready, and the wind was fair, and the weather was fair.

Q. How was the wind?

A. It was off the land to the northward & westward, fair wind and fair weather, and, of course, I was anxious to get to sea, being Saturday.

Q. Where was your boat at the time of the collision; you had a boat?

A. Yes, sir; but she was laid on the house.

Q. She went so far into you as to cut your boat.

A. Yes, sir; cut her half in two, and the mizen stays were carried away, and some of the stays on the other side were carried away.

Q. What carried them away?

A. I suppose it must have been the jib-boom or bowsprit; some of the head-gear; her *g*ib-boom was carried away, but her bowsprit lay over and into my ship.

54 Q. At what speed must she have been coming?

(Objected to.)

Q. Was the "Helen R. Cooper" loaded or light?

A. She was in ballast.

Cross-examined by Mr. Beebe:

Q. Had your vessel cargo in her?

A. Yes, sir; she was full.

Q. Would that make her more or less unwieldly in the water?

A. Well, yes, sir; when a ship is loaded she is more unwieldly in the water.

Q. The "Helen R. Cooper" being light was farther out of water than you?

A. Yes, sir.

Q. So that when she came on to you her martingale and head-gear were above the top of your deck?

Q. She being light and you loaded, did it not leave her so her jib-boom & bowsprit were over your deck?

A. You must consider there is a difference in being loaded deep and loaded light.

55 Q. She being light left her farther out of the water?

A. Yes, sir.

Q. And consequently her jib-boom and martingale would come over the top of your deck?

A. Yes, sir.

Q. Pier 46 is a shorter pier than yours?

A. Yes, sir; that is what I stated.

Q. How much should you think that the stern of your ship projected out beyond the end of pier 46?

A. Well, that would be a pretty hard thing for me to say, because the piers may run in a little different direction; the angle may not be the same, but my vessel was lying 20 feet inside of pier 45.

Q. By the COURT. How much did your ship lay inside pier 46?

A. I should say 50 feet—75 perhaps.

Q. By Mr. BEEBE. How far from that pier were you laying?

A. Well, the "Helen R. Cooper" lay right alongside of that pier when her bows were into my ship.

56 Q. State, if you can—give me an estimate of it—the distance from the outside of your ship to the inside of pier 48?

A. You mean the space between my ship and pier 46?

Q. Yes.

A. Well, it would be about the width of two ships.

Q. Would that be 80 or 100 feet?

A. Well, it would be about 60 feet.

Q. What time did you leave your ship that morning, first?

A. I think it was 9 o'clock.
Q. Did you notice how the tide was then?
A. The tide was flood then.
Q. Did that set the ice on the New York shore?
A. Well, I did not notice in particular about that, because my ship was up in the dock at that time.
Q. You did not notice?
A. I noticed the river was full of ice when I came across in the ferry-boat.
Q. Did you cross in the ferry-boat?
A. Yes, sir.
57 Q. Were the ferry-boats crossing and recrossing that day?
A. Yes, sir; but they had pretty hard work.
Q. Did they cross?
A. Yes, sir.
Q. You left at 9 o'clock. Where did you go to? Did you go into the city to attend to business?
A. Yes, sir; I went into the city of New York to attend to business.
Q. When did you next return to your ship?
A. Between 1 and 2 o'clock.
Q. What time did this collision take place?
A. I have just stated.
Q. Please state it again.
A. 15 minutes past 2 o'clock.
Q. How long did you remain at the ship then?
A. It might have been half an hour; perhaps three quarters of an hour?
Q. Where did you go then?
A. I went into the city on business.
Q. When did you return to the ship again?
A. I can't say exactly what time, but it was before dark.
58 Q. Was it in the neighborhood of dark?
A. Well, yes, sir; it might be.
Q. You have given to us your river experience for that day?
A. No, sir, not the whole of it. I have been answering questions.
Q. Did you sleep on board your ship?
A. No, sir.
Q. What time did you get to it?
A. I was there between 8 & 9 o'clock.
Q. And left about 9?
A. Yes, sir.
Q. You returned between 1 & 2?
A. Yes, sir.
Q. You were there about half an hour?
A. About half an hour when?
Q. At the time of the collision?
A. Yes; I was there half an hour, perhaps more.
Q. How much?
A. Perhaps two hours?
Q. Part of the time you were in the cabin?
A. Yes, sir.
Q. Then you left?
A. Yes, sir.
Q. And you returned again about dark—a little before dark?
59 A. Yes, sir.
Q. And went to Brooklyn when you got ready?

A. Yes, sir.
Q. How long did you remain on the ship when you went there about dark?
A. I can't say how long I remained there.
Q. About how long?
A. Well, it was about dark when I left.
Q. It was about dark when you went.
A. No; it was before dark.
Q. Did you ever go to sea in the ice?
A. No, sir; I never left port when the ice was running; I have got into port.
You say my river experience that day; I have not told the whole of it.
Q. By Mr. BENEDICT. What have you to say about any farther river experience?
A. Well, the ice reached over to the New York side, below the piers, where I lay; but from pier 45 up, it was quite clear.
60 Q. By the COURT. When?
A. That day when I went aboard the ship.
Q. By the COURT. When; at the time of the collision?
A. At the time of the collision.
Q. By Mr. BENEDICT. What time of the year was it?
A. 17th day of February.
Q. By Mr. GOODRICH. I understand you to say the ice was across the whole river below pier 45?
A. I could not say the whole distance across; but I noticed on the New York side below me there was a good deal of ice.
Q. How many piers below you did there seem to be a good deal of ice?
A. The next pier below me.
Q. And all the way down as far as you could see?
A. Yes, sir.

Redirect. Examined by Mr. Benedict:

Q. What was there to prevent this "Helen R. Cooper," if anything, going by her?
A. Well, I don't know what could have prevented her going by
61 me; there was room enough.
Q. Did you see anything in the way?
A. No, sir.

FRANK GORSSENS, a witness for libellants, being duly sworn, testified.

Examined by Mr. Benedict:

Q. You were steward on board the Chapman?
A. Yes; I was cook.
Q. Do you recollect the time of the collision?
A. Yes, sir.
Q. Were you on deck?
A. Yes, sir.
Q. How long had you been there?
A. About three minutes, I should think.
Q. Was any body else on deck besides you?
A. No, sir.
Q. Where were the others?
A. At dinner, sir.
Q. Where were you on the deck?

A. I was coming aft from dinner, when the ship came running down and let go both her anchors.

62 Q. How far off was the ship when you first saw her?

A. She was pretty near, a pier higher up than ours.

Q. How fast was she coming?

A. About 7 or 8 knots; I can't tell exactly.

Q. Did you see the tug?

A. Yes, sir.

Q. Where was the tug?

A. Alongside, trying to get her out.

Q. Where did you look over your vessel to see the tug?

A. I looked on the side where she was struck—the starboard side.

Q. Did you look off over the bows?

A. No, sir; about amidships.

Q. Where was the tug?

A. The tug was outside in the river, trying to get her out.

Q. How far out?

A. I should think about 50 or 60 fathoms.

Cross-examined by Mr. Beebe:

Q. Were you frightened?

A. No, sir; I was not exactly scared; it was not the first time I had seen a collision.

63 Q. You had scarcely seen her when she was into you?

A. I saw her before.

Q. How many minutes before?

A. Well, I don't think it was over two minutes.

Q. Was it two minutes?

A. I had my watch in my pocket; I could not say.

Q. What is your judgement?

A. She runs very fast.

Q. Was it two minutes about, to your judgement?

A. I should think so, sir; it is more than I can tell.

Q. By Mr. GOODRICH. At the time when you first saw the Cooper she was headed directly for your ship, at right angles?

A. Yes, sir; she came round the pier *that* way; our ship was about 25 feet inside an English ship that lay there; I think it was the "Knight of Snowdon."

Q. The Cooper was heading down for your vessel, and the tug off from her?

A. Yes, the tug was off from her.

Q. The tug was at right angles from the Helen R. Cooper?

64 A. Yes, sir.

Q. And she was so all the time until the Cooper struck your vessel?

A. Yes, sir.

Q. She was pulling all the while?

A. She was pulling.

Q. All the while, and not stopping?

A. Yes, sir.

Q. By Mr. BEEBE. All this was very quick?

A. Yes, sir.

Q. Did you see the tug before the ship struck you?

A. Yes, sir.

Q. Did you make up your mind how fast she was coming?

A. No, sir; I did not make up my mind, but I judged after when I saw her.

Q. Did you make up your mind how many knots she was running when you saw her?

A. No, sir; but I suppose a ship would run 8 knots.

Q. Did you make up your mind?

A. I did not make up my mind till after she struck.

65 Q. Did you make it up as soon as she struck you?

A. Well, I stood over the side there and I think the ship must run 7 or 8 knots.

Q. Did you make up your mind how fast she was running at the time she struck you?

A. Well, I did a little afterwards.

Libellants rests.

Mr. Goodrich moved that the libel be dismissed as to the steamboat "Mabey."

66 *Defence.*

GEORGE BURGER, a witness for the ship "Helen R. Cooper," being duly sworn, testified.

Examined by Mr. Beebe:

Q. What is your business?

A. Sandy Hook pilot.

Q. How long have you been in business as a pilot?

A. I have been a pilot a little over 20 years.

Q. Do you know Mr. Johnson, the pilot here?

A. Yes, sir.

Q. Were you a pilot on the 17th of Feb'uary, 1866.

A. I was, sir.

Q. Did you take a vessel to sea that day from the port of New York?

A. Yes, sir.

Q. On what tide did you take her?

A. I took her at high water slack.

Q. About what hour was that?

A. Well, it was within an hour of half-past 10 and half-past 11, probably; it was between those hours; I don't recollect precisely the hour.

Q. Whereabouts did you take her from?

67 A. Pier 17, East River.

Q. How far down did you go with her?

A. I took her to sea.

Q. What vessel was it?

A. The ship "Glenaris."

Q. How large a ship?

A. About 800 tons, I suppose.

Q. Light or with cargo?

A. With cargo.

Q. Was she full of cargo?

A. I think she was.

Q. You took her from pier 17. Was she alongside the pier?

A. She was on the lower side of pier 17.

Q. How was she taken into the stream?

A. On a hawser by a tug.

Q. Attached to a hawser?

A. Yes, sir.

Q. How long was the hawser?

A. Probably 50 fathoms.

Q. In your judgment, after 20 years' experience, was it prudent to take a vessel out to sea that day?

A. It was most undoubtedly.

Q. You have had 20 years experience in the port of New York?

A. Yes, sir; I have been in the business steady without any cessation.

68 Q. When the tide is ebb, which way does the ice set in the East River?

A. Above the Catherine Ferry, on the Brooklyn side.

Q. How was the ice when you took this vessel out, with reference to the New York shore?

A. I went out a slack water and the ice was all above—very little ice in the river.

Q. Before you got started, did the ebb commence to run?

A. No, sir.

Q. What time did the ebb commence to make?

A. Probably about 11, or half-past 11.

Q. What time did you get down with your vessel?

A. Between two and three o'clock, probably.

Q. You had got down how far?

A. At sea.

Q. Then you had the ebb tide all the way down?

A. Yes, sir.

Q. Is that the proper time to take a vessel out with ice in the river?

A. Slack water is the proper time.

Q. I mean with ice in the river?

69 A. If the vessel does not draw too much water, we will go to her any time unless the river is blockaded with ice.

Q. You know the "Helen R. Cooper?"

A. Yes, sir.

Q. Was it proper to take her to sea that day?

A. With the same propriety that I took my ship. I think my ship was the largest, but I am not sure.

THOMAS AITKEN, a witness for the ship "Helen R. Cooper," being duly sworn, testified.

Examined by Mr. Beebe:

Q. You are a Sandy Hook pilot?

A. Yes, sir.

Q. Attached to what boat?

A. J. D. Jones.

Q. How long have you been piloting?

A. Fourteen years and 2 months.

Q. Did you take a vessel to sea on the 17th of February, 1866?

A. I did.

Q. What vessel did you take?

A. Steamship "Fulton."

Q. From where did you take her?

A. Pier 37 North River.

70 Q. When there is ice in the river, is there any difference in the two rivers as to the trouble in getting out; if there is, which is the worst?

A. Well that depends on the tide?

Q. Take it at a high-slack, or from that to ebb?

A. I have seen more ice in the North River sometimes, and sometimes more in the East River.

Q. In your judgement, was it prudent to take a ship to sea that day?

A. Yes, sir; several ships went to sea.

Q. How many can you say to your own knowledge?

A. I know there were five steamships went to sea that day; sailing vessels I could not tell; I was not down to the Hook long enough to know.

Q. You know where the Brooklyn gas works are?

A. Yes, sir; it is what we call the Shinbone stores.

Q. There were two monitors that lay along the dock; the "Helen R. Cooper," lay with her stem up in *that* way, with her starboard
71 side alongside of the pier, heading in toward Brooklyn. She was lying so that her bows extended up beyond where the monitors were lying. The tug came to take her, but owing to the fact that those monitors were there, she could not be got out except by pulling her astern. The tug took her with a hawser fast to her stem, carried aft and there fastened by a slip rope; the tug pulled her out until her stem passed the end of the pier and she got free from the monitors; then this slip rope was slipped off, and the tug pulled at her at right angles, keeping her round down the river for the purpose of getting her out. I want to know if that is proper navigation?

A. Yes, sir; we always go out with a slip-rope in that case when they can't get alongside.

Q. How do you generally go out?

A. Nine times out of ten we go out with a steamboat ahead.

Q. In your judgement that is proper navigation?

A. Yes, sir.

72 Cross-examined by Mr. Benedict:

Q. What steamboats were these that went to sea?

A. The "City of Baltimore."

Q. Where did she go from?

A. Pier 44 North River. I remember her particularly because her pilot and I came out in the same boat. There was a national boat.

Q. Where did she go from?

A. Pier 15 North River. There was a German boat went from Hoboken. I am not sure whether there was an extra Cunard steamship or not, but there were five European steamers went to sea that day.

Q. By Mr. GOODRICH. Was there not a French steamship also.

A. I am not sure.

Q. By Mr. BEEBE. There was the Peruvian and the City of Washington?

A. I did not take notice of the southern boats; I only noticed the European boats. Saturday is the steamer day. They all sail on Saturday.

Q. By Mr. GOODRICH. When you are put upon the quarter-
73 deck of a ship, who has charge of the ship when she is towing—the captain of the steamboat or the pilot?

A. I always supposed I had charge of her.

Q. Is it not true?

A. Yes, sir; the pilot.

Q. You give orders and hold the tug responsible?

A. Yes, sir.

Q. By the COURT. You gave orders to the tug what to do?

A. Everybody on board is under my charge.

Q. By Mr. BENEDICT. Would you give orders to the tug to port or starboard her helm?

A. Yes, sir; and he has got to do it. If the steamboat don't do what I say, I will cut his hawser and let him go. I don't allow anybody to tow me ashore.

Q. By Mr. GOODRICH. That is the customary rule with pilots?

A. Yes, sir; that is what the pilot is for.

74 By Mr. BENEDICT. Do they give orders to the tug when to stop and when to go on?

A. If there is likely to be any damage, of course.

Q. By Mr. BENEDICT. When there is any order to be given it belongs to you to give it?

A. Yes, sir.

GEORGE BURGER, recalled.

Examined by Mr. Beebe:

Q. Did you hear me describe the manner in which the "Helen R. Cooper" was taken from this pier?

A. I heard it, sir.

75 Q. In your judgement was that proper navigation?

A. It is the proper way of going out of a dock.

JOHN JOHNSON, a witness for the ship "Helen R. Cooper," being duly sworn, testified.

Examined by Mr. Beebe:

Q. What is your business?

A. Sandy Hook pilot.

Q. How long have you been engaged in the business of piloting?

A. Between 17 & 18 years.

Q. Were you the pilot of the "Helen R. Cooper," on the 17th of Feb'uary?

A. I was, sir.

Q. What time did you go on board of her?

A. I went aboard of her about twelve o'clock—from half past eleven to twelve o'clock.

Q. Where was she laying at that time?

A. On the upper side of the Brooklyn gas-house.

Q. Just describe the situation?

A. She was lying on the upper side with her head in to the southward, lying inside of two iron-clads, with her starboard side to the dock.

Q. Did you go there in the tug?

A. Yes, sir.

Q. What tug was it?

76 A. The "R. L. Mabey."

Q. Who did you find there when you went there?

A. I found some men working aboard of her. We had the crew aboard of the steamboat.

Q. Was the captain aboard of the vessel?

A. No, the captain went over with us, I think.

Q. On board the tug?

A. On board the tug.

Q. Had you any trouble getting across the river?

A. Well, we had considerable.

Q. What trouble?

A. We got into the ice on the Brooklyn shore.

Q. Go on and describe what was done?

A. We got there and landed our crew on the gas-house dock, and they went from there aboard of the ship; finally we tried to get the tug alongside to pull her out, but she could not get there; so we had to pass a spring line from the port bow to her quarter, and then the
77 tug went ahead and pulled us out, and when I got well clear of the dock we let go the spring line and swung the ship head up.

Q. Was that proper?

A. That was proper. The steamboat turned head on to New York, and when we got about half way across the river, with our stem in the ice, a ferry-boat came up the river and crossed the steamboat's bow, with the steamboat angling on New York—the Mabey heading about N. W. on New York. This ferry-boat came up and crossed her bow, and I saw they were coming together; the tug-boat slackened herself up, and I hailed the tug-boat to go ahead; the tug-boat and ferry-boat were drawing close together; I think he would have struck the ferry-boat if he had kept his course; the ferry-boat crossed her bow to get clear of this ice; and by the slackening of the hawser up the ship's head canted more on to New York, on to pier 49. When I hailed the tug to go ahead
78 he started ahead, and I hailed him then to stop, and then I let go my anchors, one off pier 47, and the other off pier 49.

Q. The ship was abreast of pier 49, at the time the tug slackened her hawser?

A. Yes, sir.

Q. Now, if the tug had kept on and kept your hawser taut, would your ship have gone into the dock at all?

A. No, sir; but I think she would have struck the ferry-boat.

Q. The tug would?

A. Yes, sir.

Q. Could the tug have kept to the right, or had she to keep at right angles to prevent your going into the dock?

A. She had to.

Q. If she had attempted to have kept to the right of the ferry-boat, what would have been the result?

A. She would have brought herself and us into the dock. The hawser passed from us, he had in his quarter chock; and if he had kept off ahead to this steamboat he would have gone into the dock.

79 Q. In order to keep you down it was necessary to keep off at right angles.

A. Yes, sir.

Q. At the time the steam-tug slacked off on the hawser, how was your ship in reference to the ice?

A. Our stem was 20 feet into the ice.

Q. How was the stern?

A. It was clear.

Q. How was the tug?

A. In clear water, drawing off, head on the New York, about N. W.

Q. How was the ship's head at the time she shot ahead after the hawser slackened in reference to the New York pier?

A. Heading about N. N. W., almost head on to the pier, angling on the pier.

Q. One of your anchors you let go opposite pier 49?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir, between 48 and 49.

Q. How much chain was paid out?
A. I had a 30-fathom chain on one anchor, and about 18 fathoms on the starboard anchor.
80 Q. That was 18 and 30 fathoms you had out?
A. No; one was about 21 and the other 18.
Q. Was all that let go?
A. Yes, sir.
Q. Did it bring the ship up?
A. No, sir; it was a limestone bottom, and she dragged her anchors.
Q. Was there anything the ship could have done at that time more than was done to have prevented her going into the pier?
A. No, sir.
Q. If it had not been for this Brooklyn ferry-boat crossing the bows of this tug, would she have gone clear?
A. Yes, sir. I think there would have been no trouble.
Q. Was there any trouble but this?
A. No, sir.
Q. If the tug had kept on she would have struck the ferry-boat?
A. Yes, sir.
Q. In your judgement was it prudent for her to proceed to sea at that time?
A. Yes, sir.
81 Q. Did you go to sea in her the next morning?
A. Yes, sir.
Q. Did the same tug tow her?
A. Yes, sir.
Q. You say you have been a pilot for seventeen years?
A. Yes, sir.
Q. Did you see other vessels going to sea that day?
A. No, sir; I was not in a place to see them go.
Q. At what time was it slack water that day?
A. About 11, or half-past.
Q. You commenced to take her out about 12?
A. About half-past 11 we commenced, but we were detained a little.
Q. What effect did the ice have on her stern?
A. The ice carried her down with the tide, because the tide is stronger on that shore.
Q. Did it throw her more across towards New York?
A. Yes, sir.
Q. Where were you standing at the time you say the hawser slackened?
82 A. I was standing aft and I ran forward and hailed him to go ahead.
Q. How was your helm?
A. Hard astarboard.
Q. Was there any change in that up to the time you struck.
A. No, sir.
Q. After you struck was it changed?
A. After we went to the dock our stern set off, and I put it hard aport, because the tide set down on the dock.
Q. What was the first time it was changed?
A. That was the first time.
Q. When was it put hard astarboard?
A. From the time we started from the Brooklyn docks, after we swung head on the tide.

Q. Was there any alternative for the tug at that time, except to slacken or run into the ferry-boat?

A. No, sir; and when I hailed him to stop his boat he stopped it, and he could not get her into position, because he was head on the tide. I saw the ship was not coming to, so my only alternative was to let go my anchor.

83 Q. By Mr. GOODRICH. As you were swinging out from the Shinbone stores and swinging round with the head of the Cooper towards the S. W., the tug was all the while at right angles to you?

A. No, sir.

Q. Nearly?

A. When do you mean?

Q. After you swung around, you took a spring line from the stem to the port quarter, then you cut the spring line?

A. Yes, she was at right angles, for she was up the river.

Q. She was nearly at right angles all the while round?

A. Not all the while.

Q. Nearly?

A. Nearly all the while.

Q. That was the best way to keep the head of the Cooper from the New York shore?

A. Yes, sir.

Q. And it was the only way to do it?

A. The only way.

84 Q. What course could the Mabey have taken to have avoided that collision?

A. None, sir; if we had her alongside we could have stopped her, and acted differently; but we could not get her alongside.

Q. Did you give any orders to have her alongside?

A. Yes, sir; I did.

Q. When?

A. When we started from the dock.

Q. But you consented afterwards to have her go ahead?

A. Yes, sir; that was the only way to get her out.

Q. You ordered her to go ahead?

A. Yes, sir; I gave them a hawser, certainly.

Q. When the ferry-boat came out from the New York side, was there imminent danger of a collision between the tug and ferry-boat; did the tug-boat do right to stop to prevent that collision?

A. Well, he would have run into him.

Q. Supposing there had been a collision between the tug and ferry-boat, it would not have saved you any more to have gone on the

85 New York shore?

A. No, sir; because we would have been foul of one another.

Q. Then she did right?

A. Certainly, sir.

Q. And when you hailed her to go ahead she went ahead?

A. Yes, sir; when I saw him slack his hawser, I hailed him to go ahead.

Q. And he did so at once?

A. Yes, sir.

Q. Did he disobey any of your orders?

A. Not then, he did not.

Q. Did he at any time

A. No, sir.

Q. What was the slack of the hawser—was it a slight slack?

A. It touched the water.
Q. Touched it slightly?
A. It touched the water some time, may be two minutes.
Q. You say the ferry-boat came out from the New York side to go to Brooklyn?
A. I don't know where she came from, she was bound up the East River to Hunter's Point, or some such place.
86 She was on the port side of the tug?
A. Yes; she was ahead of the tug.
Q. The ferry-boat had the tug on the starboard side?
A. Yes, sir.
Q. By Mr. BEEBE. Where could she have gone?
A. If she had come close up the docks she would have done well enough.
Q. It was in the attempt of the ferry-boat to cross the bows that caused that trouble?
A. Yes, sir.
(Witness illustrates by models.)
After the tug pulled the ship out they put the hawser in her port chock.
Q. By the COURT. When the ferry-boat started how was the steamboat from you?
A. About N. W. N.
Q. How much did she starboard?
A. A good deal; the tug had a starboard wheel all the while. When the tug slacked up the ship's head canted to the northward more,
87 and finally when she got close to this ferry-boat I swung out to him to go ahead, and he went ahead.
Q. When you let go the first anchor how were you heading in reference to pier 49?
A. Pier 49 would be about N. E. by N., when I let go my first anchor off the starboard bow.
Q. How far out were you from pier 49?
A. I should think I was 300 feet.
Q. What canted your head to the northward when the steamboat slackened?
A. The ice on the stem of the ship; the tide is stronger on the Brooklyn side than the New York side.
Q. By Mr. BEEBE. Off pier 49 you let your first anchor go?
A. Yes, sir.
Q. Then you were off about 300 feet?
A. 200 or 300?
Q. Where did you let your next anchor go?
A. About pier 47.
Q. At the time the hawser was slackened by the tug, had the
88 tug full control of your ship?
A. Yes, sir.
Q. Was there any trouble about her towing her down if it had not been for the slacking of that hawser?
A. I don't think there would be.
Q. Have you any doubt about it?
A. No, sir; I think no doubt at all.
Q. She was turning the ship handsomely down?
A. Yes, sir.
Q. By the COURT. How far did your vessel get headed down the farthest she got?

A. About N. W. N.

Q. By Mr. BEEBE. How does the river run there?

A. About W. S. W. We had got within about four points of heading straight down the river; I let go my port anchor, and that headed her down, and when the Cooper struck the Chapman she must have been heading about W. by S.

Q. By Mr. GOODRICH. What pier were you opposite when the ship commenced to sheer to starboard?

89 A. Opposite pier 49.

Q. By the COURT. And the ice on your starboard quarter is what swung you into the dock?

A. Yes, sir.

Q. By Mr. GOODRICH. The tide sets over from Coe's stores, Corlear's Hook, to Shinbone stores, and then from there to the New York pier 45?

A. Yes, sir. That is on the ebb side. The strongest tide sets across there.

Q. By Mr. GOODRICH. You say that when the ferry-boat crossed the bow of the tug, the tug had full control of the ship; you mean simply as to motive power?

A. Yes, sir.

Cross-examined by Mr. Benedict:

Q. Can you take your pencil and mark on this little plan of yours the course of these vessels?

A. I could not exactly without a chart, but I can give you somewhere near. The ship lay *here*, and the steamboat took a hawser from her *here*. The steamer puts the hawser in *that* chock on the starboard side.

90 Q. Give us the course she came.

A. The ship is lower down. She comes round with the circle, turns gradually, takes a sweep round. The ship is dropping down all the while with the ice. The ship is about *here*, and the steamboat *here*, and drifts along till she gets down *here*, to pier 49. The ship is about in *this* position, and the steamboat *here*.

Q. Make a line of how the ship and tug get down *here*.

She was dropping all this time down with the tide. I will go over it again. Before the steamboat gets canted around the ship has got way down *here*, and then she commences to start across the river, and keeps coming over, the tug heading about W. N. W., and we about N. W., and this ferry-boat crosses.

Q. The tug went down along shore here?

A. They are both dropping as they turn. They are both dropping with the tide.

91 Q. Is it true that the tug went along down the Brooklyn shore?

A. No, sir; I don't say so.

Q. Where did she go?

A. She went on the New York shore.

Q. After the tug had hauled the ship out of the slip, then the ship, I understand you to say, headed up the river?

A. Yes, sir.

Q. At that time, when she headed up the river, was she above or below the Shinbone wharf?

A. She was abreast of the Shinbone wharf, and below it.

Q. Where was the tug?

A. About 200 feet above it.

Q. You mean by that, that the hawser was 200 feet long?

A. Yes, sir.

Q. What did you do with the helm of the tug—did you give any orders what they should do with it?

A. No, sir; because I could not hail them at that distance.

Q. Too far off?

A. Too far off.

Q. Which way did they put their helm?

92 A. They put their helm to starboard.

Q. That threw the head of the tug around over towards the New York shore?

A. Yes, sir.

Q. Did they keep it that way all the while?

A. Yes, sir.

Q. On a starboard helm?

A. A starboard helm.

Q. Was there any ice on the Brooklyn shore?

A. Full of it, sir. Both vessels were in the ice then.

Q. And the tug was pulling away on a starboard helm—that is, the starboard helm of the tug?

A. Yes.

Q. And she kept a starboard helm?

A. Yes, sir.

Q. The effect of that would be to bring her on a circle down towards the New York shore?

A. It would; but you see the tide was running strong, and vessels drop astern.

Q. But inasmuch the tide was running ebb, and you were full of ice, you drifted down?

93 A. Yes, sir.

Q. Both tug and ship?

A. Yes, sir.

Q. Was the hawser all the time taut?

A. It was at that time?

Q. So you both drifted down together on a taut hawser?

A. Yes sir.

Q. During that time, at what angle was the tug to the ship—was she straight ahead?

A. About a point on the port bow.

Q. How far down did they drift with you in that position?

A. About abreast of Jackson-st. ferry, on the Brooklyn side.

Q. And then what?

A. Then she commenced to cant for New York.

Q. The tug?

A. Yes, sir.

Q. Still in the ice?

A. Still in the ice—yes, sir.

Q. She did not cant much under that starboard helm at first, did she?

A. No, sir.

Q. Then what became of the ship?

A. She commenced to cant some too.

94 Q. At about what angle were you then to the tug?

A. She was about two points and a half on my port bow at that time.

Q. Did the tug keep on that starboard helm continually?

A. She did, sir; till the ferry-boat got in the way.

Q. Then you still went on in the ice, and the tug bearing more and more on your port?

A. Yes, sir. She was about two points on my port bow from the time I canted at Jackson-st. ferry till the steamboat crossed.

Q. And then had got head down?

A. Yes, sir. She was in clear water, and the ship's stern in the ice.

Q. And she was always about two points on your port bow?

A. Yes, sir.

Q. Not more?

A. Not more.

Q. By Mr. BEEBE. You said, two to two and a half.

A. Yes; two to two and a half, as it looked by the ice.

95 Q. By Mr. BENEDICT. At what angle was the tug to you all this time—did you say at right angles?

A. No; she was not at right angles. If she had been she would have pulled me out. I said she was two points on my bow.

(Witness illustrates by means of models.)

Q. How far out do you say the ice was from the New York shore?

A. Well, it was about half way across the river.

Q. Then you had half the river to move her in?

A. Well, no; not with the hawser. My stern was partly in the ice and partly out, and the steamboat and hawser clear of the ice.

Q. I understand you to say there was half of the river clear of ice?

A. I should think there was.

Q. And so your stern was 30 feet in the ice—then you had half of the river to work in?

A. At a certain part of it. I said half the river, but as I came down I came nearer to the New York shore.

Q. Then you were clear of the ice?

A. Yes, sir.

96 Q. What I want to know is how near the ice was to pier 45 at the time of the collision.

A. Well, the ice was not half way across the river there.

Q. How near was it, do you think, to pier 45?

A. Well, I suppose half way.

Q. Does the ice come near to the New York shore there?

A. No, sir; it struck more into the middle of the river there, and passed somewhere along the Fulton ferry, on the New York shore.

Q. I understand you to say that the tide strikes from Corlear's Hook across to Shinbone wharf?

A. Well, it does.

Q. Then I understand you to say it changes its course, and strikes over to the New York shore?

A. Yes, sir.

Q. Does it take the ice along with it?

A. It does not take it all the way over.

Q. How was it that day?

A. I suppose half way over that day.

Q. The ice did not come any further to the New York shore

97 down below than it did above?

A. Well, I did not measure it all the way; where the accident happened I paid attention to it, and I can answer you any question from pier 45 up to Shinbone stores.

Q. Then I understand you to say that opposite pier 45 the river was clear half way across.

A. I shonld think it was half way.

Q. How wide is the river there?

A. About $\frac{3}{4}$th of a mile.

Q. Opposite what pier were you when your bow began to come out of the ice?

A. I was above pier 49; I was about opposite Jackson-st. ferry, on the New York side.

Q. How far down were you when your stern came out of the ice?

A. I let go my anchors directly my stern came out.

Q. How far down?

A. Between 48 and 49.

Q. Then I understand you that you let your anchors go in the middle of the river?

98 A. No; I don't mean to answer any such thing; you asked me where was the ice at pier 45.

Q. Pier 49, and all the way down, you said it was just the same, half way across; and you say just as soon as your stern came out of the ice, you let go your anchors?

A. I let go my anchors about 250 feet from the dock, between 48 and 49. You don't suppose the ship was going to stay right there when I let go my anchors?

Q. What shot the ship on to the New York shore?

A. The stoppage of the steamboat, to avoid a collision with the ferry-boat.

Q. Before the tug stopped she was heading on the New York shore?

A. She had her head on the New York shore.

Q. After he slacked his line she shot right along?

A. Certainly.

Q. And you first let go your port anchor?

A. Yes.

99 Q. Then you were between 48 and 49?

A. Yes.

Q. And she dragged that anchor, and you let go the starboard anchor?

A. Between 46 and 47.

Q. How was the wind?

A. At that time about S. to S. S. E. It had been light to the northward, and the northward and westward, and the wind died out, and came to the southward and eastward.

Q. It had a tendency to blow the ice over the New York shore?

A. Well, there was none of it—no wind.

Q. How far did the ferry-boat clear the tug?

A. Well, I did not measure the distance; I could not tell; but I think she would have struck her if she had kept ahead.

Q. How far did she clear her?

A. I should think about 10 feet.

Q. Do you know what ferry-boat that was?

A. I do not.

Q. Where did she start from?

A. I don't know, sir.

Q. I understand you to say that when the tug first slackened

100 her hawser or stopped, you ordered her to go ahead.

A. I hailed him from aft to go ahead; but I don't know whether he heard me or not; I went forward on the forecastle, and he was going then, and I hailed him to stop?

Q. Did he go ahead when you hailed him?

A. I don't know whether he heard me; I was so far aft that I don't believe he heard me.

Q. You hailed him to go ahead, but you don't know whether he heard you; is that so?

A. Yes, sir.

Q. When you got forward you found he was going ahead, and you hailed him to stop?

A. Yes, sir.

Q. Then he did stop?

A. He did stop.

Q. Was the ferry-boat in the ice?

A. No, sir.

Q. Was the tug in the ice?

A. No, sir.

101 Q. Opposite what pier did the tug come out of the ice?

A. I should think about pier 50 or 51.

Q. On the New York side?

A. Yes; she came out of the ice a long way ahead of us.

Q. When she came out of the ice did she pull directly ahead and pull you out of the ice?

A. She was two points on my port bow all the time; she could not get directly ahead of me, unless she had turned out and ported her helm.

Q. How long a time do you think elapsed from the time you got down to Jackson-st. ferry till the time of the collision?

A. Well, I suppose 8 minutes—7 minutes, I suppose.

Q. Was the ship going pretty fast at the time she dragged her anchor?

A. Well, I should think she was going 2½ to 3 knots through the water, with the tide; she was going down by the shore 4 or 5 knots. She had the current, and what little headway she had on her.

102 Q. Does the tide run pretty strong there?

A. Parts of the river it does; but when we get over on to New York, above pier 45, between 46 and 47, close in, there is an eddy; there is where the ship shot into. On the upper side of pier 45, there is a short pier there; there is an eddy sets off from those docks down on to 45; the long dock forms the eddy.

Q. How thick was the ice?

A. I can't tell you how thick.

Q. It was broken ice?

A. Some broken, and some field ice.

Q. In large cakes?

A. Some of it was; some of it might have been 4 or 5 feet thick, piled on top of one another.

Q. Whereabouts were you standing on your vessel?

A. At what time sir?

Q. From the time you left did you keep the same position?

A. No, sir; I did not keep the same position. When I started

103 I was aft on her quarter deck, and when I went forward to hail him to stop the vessel, I was on the forecastle.

Q. And then you stayed there until the collision?

A. Yes, sir.

Q. Where was the captain?

A. The captain was on deck.

Q. Whereabouts?

A. On the quarter deck.

Q. All the time?

A. Yes, sir.

Q. To the time of the collision?

A. Well, he might have followed me forward; but I don't think he did; but when I went forward to hail the steamboat, he was on the quarter deck.

Q. By Mr. GOODRICH. You said that the tug had the hawser in the port chock?

A. Yes, sir.

Q. When was that taken out of the port chock; was it at all?

A. I don't recollect.

Q. When was the hawser taken up short? You said at the time your vessel lay alongside the Jackson-st. ferry, you could not hail the
104 pilot of the tug because he was 200 feet off. The hawser was taken up after that?

A. No, sir.

Q. Was it not taken up short at all?

A. No, sir.

Q. Where is the wheel?

A. On the quarter deck.

Q. How near were you to the wheel?

A. Before I went forward I was as near as I am to the judge.

Q. When you went forward, how far, then?

A. I was the extreme length of the ship.

Q. How long is the ship—100 feet?

A. More than that.

Q. 150 feet.

A. I don't know.

Q. By Mr. BEEBE. Did you see the wheel put to port after the vessels was struck?

A. Yes, sir.

Q. Up to that time how was the wheel?

A. Hard astarboard.

Q. You saw it change to port after the vessel struck?

105 A. I ordered it changed.

Q. And did you see it done?

A. Yes, sir.

Q. And at the time you gave the order, the wheel was how?

A. Hard astarboard.

Q. It struck so?

A. Yes, sir.

Q. And was kept so?

A. Was kept so.

Q. By Mr. BENEDICT. Was the wheel hard astarboard?

A. The wheel was hard astarboard when we left Brooklyn, and kept so until we went into the ship.

Q. By Mr. BEEBE. Suppose that when you ordered the tug to stop, after your vessel had taken that cant in shore, what would have been the effect if she kept on?

A. She would have towed us head on to the docks.

Q. Would it have increased your speed?

A. It would, sir.

Q. And the damage would have been greater?

A. She would have gone through to the ship. This ship was
106 light and high, and her martingale, jib-boom, and all, went over the rail, and she struck the ship head on.

Q. And with the increased impetus that the tug would have given her, she would have gone through her?

A. Yes, sir; and sunk the ship.

Q. By the COURT. Was the hawser taut all the time from the time you got headed up until they stopped for the ferry-boat?

A. Yes, sir.

Q. Never slack at any time?

A. No, sir.

Q. All the while heading round?

A. Yes, sir; but we dropped gradually down with this ice.

Q. But you kept that distance from her?

A. Yes, sir.

Q. Did the tug stop at any time, except when she came to this ferry-boat?

A. No, sir.

Q. Did you stop her wheels at all?

A. No, sir.

Q. By Mr. BENEDICT. Which way were you heading when you
107 came out of the ice, by the compass?

A. Well, I was heading down about on to pier 48.

Q. By the compass?

A. I did not look at the compass, but I can tell you pretty nigh.

Q. Tell us about the way you were heading by the compass when you came out of the ice—your ship?

A. She was heading about N. N. W.

Q. By Mr. BEEBE. And swinging?

A. And swinging.

Q. By the COURT. How far did this ice extend when she took you in tow?

A. It was way up East River; the Wallabout was full coming down; there had been ice for three or four days before that; the river had been blockaded, so that no vessels had got off for three or four days, until this fleet got off.

Adjourned to Friday, June 14th, at 12 M.

108 JUNE 14TH.—On behalf of the "Helen R. Cooper" the following deposition of William M. Smith was read:

109 U. S. district court.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER," HER tackle, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WILLIAM W. SMITH, of said district, being duly examined and sworn as a witness on the part of the ship "Helen R. Cooper," says:

That I am aged fifty-one years, and am a master mariner by profession; followed the sea thirty-six years, and been ship master twenty years; that I am now attached to the ship Charles A. Farwell, and expect to go to sea to-morrow; I know the ship "Helen R. Cooper;" I was in command of her in Feb'uary, 1866; on the 17th day of that month, she was lying at Gas Company's wharf, Brooklyn—near the navy yard that wharf is; two U. S. monitors lay within ten feet of her; she was lying in the side of the wharf nearest the navy yard; she was bound to Key West, ready for sea; she was bound to Key West in bal-

last; there was a light wind, I think, from the northwest; the
110 steam-tug "R. L. Mabey" came to us for the purpose of towing us to sea; she brought the pilot and crew of the vessel with her; she reached us between eleven & twelve o'clock in the day; the tide, at the time she came, was high-water slack; there was more or less ice in the river in spots; on the New York side it was perfectly clear; the tug took hold of us.

Q. Was anything said to anybody as to its being prudent to go to sea?

(Objected to.)

A. Yes, sir; I asked the pilot when he came if he thought it prudent to start the ship, and he told me he did or he should not have come there. The ship was lying alongside the dock, with her head up the dock, and the tug made fast to us by a hawser at our port bow, and then led along the side and made fast by a spring at the stern, in order to clear the two monitors that laid under our bows; the ship was then hanging by spring lines to the wharf; when the ship was pulled back so as to clear the monitors, the spring which made the hawser fast at the stern was cast off, and the steam-tug then started off at nearly right angles towards the east, to pull her bow around, so as to have
111 her head down the river, or towards the westward; our helm was put hard astarboard; when the ship' bows had been hauled around so as to head the *eastward*, and was turning so as to head across and down the river, our stern fasts were cast off, and the steam-tug had full command of the ship; the ship's wheel was kept hard astarboard all the time, and the ship shot over out of the ice; the ship was at this time heading towards the westward, angling towards the New York shore; her stern at the time might have been in a little floating ice, but nothing to do any harm; her stem and bows in clear water; at this time there was danger of a collision between a ferry-boat and a tug; I suppose at this time the tug was towing us by a hawser, ahead thirty-five to forty fathoms; I do not know the name of the ferry-boat or the slip she had come from; she was headed up the river, bound to the Brooklyn side; she crossed the bows of the tug, and went outside of her; she did not clear the tug by more than fifteen or twenty feet; at that time the tug had full control of the ship, and she was coming around properly; the tug slowed and gave the ferry-boat a chance to pass her; our hawser then slackened up; the tide was then
112 running ebb; the ship, by the slackening of the hawser, did not turn quick enough, and we feared that she would go into the wharf on the New York side, and we immediately let go both anchors and thirty fathoms of chain, but they did not bring the ship up; when our pilot saw the tug slow, he ordered her to go ahead; I should think at the time the tug slowed we were two hundred yards of the New York shore; might have been a little less; can't say exactly; our anchors did not bring us up, but she took our anchors with her; she came in collision with the "I. F. Chapman," lying on the easterly side of pier 44 or 45 *North* River, outside of another ship; she laid with her head up the slip; our stem and bob-stays came in contact with her starboard side, abaft the main rigging; carried away our outer bob-stays and jib-boom; our wheel was hard astarboard at the time we came in contact with her; our wheel had never been changed from hard astarboard up to the time we came in contact with the "I. F. Chapman;" as soon as we came in contact, our wheel was put hard to port, to prevent her swinging around and doing further injury by tide.

113 Q. Would there have been any difficulty in the steam-tug keep-

ing control of your ship and taking her safely out had she not to slowed to prevent a collision with the ferry-boat?

A. There would have been no difficulty, in my judgement.

Q. What would have been the effect if she had kept her headway?

A. She would have struck the ferry-boat.

Q. Did the tug take hold of you and tow you in a proper manner; and if not, what other course could she have adopted which would have been better?

A. I do not know of any other course that could have been better.

Q. Could she have taken you out lashed alongside?

A. No, sir; the tug could not have come alongside and taken us out. It would not have been prudent, and is not usual.

Q. In your judgement, was it prudent for the ship to start to sea?

A. In my judgement, it was.

Q. When did the "Helen R. Cooper" go to sea?

A. The next day.

Q. What tug towed you to sea?

114 A. The same tug.

Q. How was the ice the next day?

A. Nearly clear. No trouble with ice.

Q. Did the presence of the ice in the river on the day you started cause the collision?

A. It helped in this way; by taking us more to the New York shore to keep clear of it, and for the same reason, I suppose, the ferry-boat kept nearer to the New York shore.

Cross-examined:

The Union Navigation Co. owned the ship "Helen R. Cooper" or B. J. H. Trask—I won't be sure. I received my directions about her from Mr. Trask. I received from him directions to go to sea that day. I received those directions that morning from him in his office. The directions were that I should proceed to sea for Key West at the earliest opportunity. I did not go and get the tug and pilot. G. D. S.
115 Trask, his brother, ordered the tug & pilot. I did not say anything to Mr. Trask when I received those directions about the ice in the river. G. D. S. Trask came with the tug. It might have been half an hour after the tug got there before we cast off. We had to get the sailors' things on board and had to get the hawser bent on. The ship was lying at the east side of the wharf. We had to pull the ship, I should judge, 15 or 20 feet. That made our stern project out some thirty feet from the end of the pier. We kept a hawser still fast to the end of the pier from our stern to swing her round with. Then the tug pulled our head round to the *eastward* till we were all clear of the pier, and then we cast off the stern lines. I was standing on the after-house all the time till the collision. There was no one there on the house with me. There was one man at the wheel abaft the
116 house. When we got free from the wharf the tug towed us up the river a trifle, if any. She kept towing us right round, keeping at right angles from us. She kept on in that way till she and we got clear of the ice. There was more or less ice, but not very heavy. I should judge the clear water extended out from the New York shore two hundred yards—near a quarter of the river. When our stern got clear of the ice the tug was at an angle of about forty-five degrees from us.

Q. Where were you heading for at that time?

A. We were heading down at the shipping on the New York side, at an angle of perhaps 45 degrees; perhaps more.

Q. Can you tell what pier you were pointing for then?

A. It must have been three or four piers above where the collision took place.

Q. I understood you to say that you went farther over to the New York shore than you would have done, to get out of the ice.

117 How much farther over?

A. I could not say. We should naturally have gone down in the middle of the river, if there had been no ice. The ship of course would have turned quicker, if there had been no ice in the river.

Q. Did you hear the pilot give any directions as to the course?

A. I did not. I heard him hail the tug, and tell her to go ahead, and he ordered the wheel kept hard astarboard.

Q. Did you hear anything said, or was anything said by you, about your getting out of the ice, and going down the New York side?

A. No, sir; I have no recollection of anything said about it.

Q. You did want to get out of the ice as soon as possible; did you not?

A. Of course; it was our object to get out of the ice, for we could go ahead faster.

Q. When did you first see the ferry-boat you speak of?

118 A. When we were just about out of the ice. The ship had not much headway then.

Q. Was she still swinging?

A. She was still coming round gradually and heading down the river.

Q. Did you see the ferry-boat come out of her slip?

A. I did not.

Q. When you first saw her, she was going up the river about parallel with the piers, was she not?

A. Yes, sir.

Q. Was she outside or inside of the tug?

A. She was right ahead of the tug, and went outside to save a collision with the ship.

Q. The tug was then heading about down the river?

A. She was heading more to the southward, more towards the ice.

Q. How long did the tug slow?

A. I can't say; a few minutes—a very short time.

Q. How deep is the water there?

A. I could not tell you; seven or eight fathoms, I think.

Q. Did the pilot hail the tug?

119 A. He did.

Q. More than once?

A. I think he did.

Q. What did he say?

A. He hailed her to go ahead, and waved for them to go on.

Q. Then he thought they could go on; did he not?

A. He thought if they went on, the other boat would have given way to him, probably, which they ought to have done.

Q. Did you give any orders yourself?

A. I did not.

Q. Were you watching the tug all the time?

A. I was, and the ship, and also attending to the man at the wheel.

Q. Was the hawser cast off?

A. It was not till after the collision.

Q. Did the tug get the hawser straightened out again before the collision?

A. Partially so.

Q. Did the ferry-boat pass your ship before the collision?
A. Yes, sir.
120 Q. How long before?
A. It would not have been but a minute or so; perhaps half a dozen lengths of the ferry-boat.
Q. You say the tug was heading towards the ice. If she had gone nearer the shore, could she not have kept on without slackening?
A. Yes, but we should have gone foul; she could not have towed the ship round by going ahead of her. If she had, we should have gone into the Chapman with more force.

W. W. SMITH.

Sworn to before me this 23d day of May, 1867.
[L. S.] WILLIAM D. JONES,
Notary Public, N. Y. Co.

121 (Indorsed:) U. S. district court. Joshua Atkins & al. vs. The ship "Helen R. Cooper," &c. Copy. Deposition of Capt. Smith.

122 MARTIN J. LYONS, a witness for the ship "Helen R. Cooper," being duly sworn, testified.

Examined by Mr. Beebe:

Q. What is your business?
A. New York & Sandy Hook pilot.
Q. How long have you been a pilot?
A. 14 years.
Q. What boat are you attached to?
A. I am in none at present, sir. I am captain of the yacht "Dauntless."
Q. You were down yesterday with the yacht?
A. Yes, sir.
Q. Were you a pilot in Feb'uary, 1866?
A. Yes, sir.
Q. Do you remember Saturday, the 17th of Feb'uary?
A. Yes, sir.
Q. Did you take a vessel to sea that day?
A. Yes, sir; I took a barque to sea that day, the barque "Campanara."
Q. Where did you take her from?
A. Pier 28 East River, between 28 & 29.
Q. How large a barque was she?
A. She was a barque of about 300 tons—350 probably.
123 Q. Did you think it was prudent to go to sea that day?
A. I did, sir, or I should not have gone.
Q. How was she taken out into the stream?
A. She was hauled out into the stream by a slip hawser, fastened to the bow, and then carried to the stern, and slipped off.
Q. Did a tug take her out?
A. Yes, to sea—part of the way—not all the way.
Q. How far?
A. About the middle buoy.
Q. From there she went on without a tug.
A. Yes, sir.
Q. When did you get out?
A. I went out about 11 to half past 11; high-water slack.

Q. When a vessel has got into the stream ready to go, does it make any difference about the tide?

A. Not for a small vessel, or anything that draws less than 20 or 21 feet of water; over that we have instructions from the commissioners not to take them out of the East River with an ebb tide; but with small vessels we go any time.

Q. You know where the pier of the Brooklyn Gas Works is—the Shinbone stores, by the navy yard?

A. Yes, sir.

Q. Suppose I am standing *here* (illustrating with models) at the river & the ship is on the Brooklyn side, *here* are some monitors lying *here*. The tug-boat came and stationed herself, and took a hawser *there* from the ship's bow, passed it aft, and fastened it by a spring, and she pulls on it till she backs her off the pier, and then the stop is let go, and then the bow pulls her round, so as to head her down the river; I want to know if that is a proper way to take her out?

A. Yes, sir; we often do that.

Q. Is that the usual way?

A. Yes, sir; it is the usual way. We sometimes take them alongside when there is plenty of room, but we frequently haul them out that way because there is not room.

Q. That is the way you took your barque out?

A. Yes, sir; there was not room to get alongside.

Cross-examined by Mr. Benedict:

Q. What time of day did you take your barque out?

A. About 11 or half past 11—high-water slack.

JOHN HOBBS, a witness for the ship, being duly sworn, testified.

Examined by Mr. Beebe:

Q. What is your business?

A. New York & Sandy Hook pilot.

Q. How long have you been so?

A. Three years last March.

Q. How long have you followed piloting?

A. I have been pilot of boats, as near as I can remember about 14 years.

Q. Do you remember Saturday, the 17th of Feb'y, 1866?

A. I do, sir.

Q. Did you take a vessel to sea that day?

A. I did, sir.

Q. Where did you take her from?

A. I took her from the same pier as Mr. Lyons.

Q. What was your vessel?

A. A brig.

Q. What was her name?

A. The Bertha Ramstoff.

Q. How was she taken into the stream?

A. Took her out stern first by a spring.

Q. Fastened to the bow, and from there to the stern, and when you got her into the stream, the spring cast off?

A. Yes, sir.

Q. Was that a proper way to take her out?

A. It was, sir.

Q. Was it prudent that day for a vessel to be taken to sea?

A. Yes, sir.
Q. Did you see other vessels besides these taken to sea that day?
A. I did, sir.
Q. Was there not quite a fleet went to sea that day?
A. I could not say as there was quite a fleet?
127 Q. How many do you think you saw?
A. I saw some four or five.
Q. You saw personally, bound out?
A. Yes, sir.
Q. How far were you towed down?
A. I was towed down and anchored in the lower bay, because the wind struck in from the southward, & the captain did not like the chance to go to sea.
Q. Did she stop there on account of the ice?
A. No, sir; there was no ice in the lower bay, at that time.
Q. You have heard me describe the manner in which the vessel, this "Helen R. Cooper," was taken out from the Gas Company's wharf.
A. I did, sir.
Q. Is that a proper way to take her out?
A. That is the proper way, sir.

Cross-examined by Mr. Benedict:

Q. How large a vessel was this you took to sea?
A. I should say about 300 tons, as near as I can judge.
Q. Where did you see these other vessels going to sea?
128 A. About half-way down the bay.
Q. All of them?
A. Yes, sir.
Q. What time did you take the vessel out?
A. Well, as near as I could judge, the tide just begun to break down.
Q. That is high water slack?
A. A little after that.
Q. A few minutes after that?
A. A few minutes after that, that is, as near as I can recollect at the present time.
Q. How was the wind when you hauled out?
A. I think it was light from the northward.
Q. Did you have that wind all the way down?
A. No, sir; the wind struck into the southward before we got down to Sandy Hook.
Q. When you got down there?
A. Yes, sir.
Q. Did you have it all the way down?
129 A. Pretty much; as near as I can recollect now, we did.
Q. You have not very much recollection now about it?
A. No, sir, not very much; because we had a steamboat towing.
Q. By Mr. BEEBE. The wind must have been hauling?
A. It hauled just previous to my getting down.

GUSTAVUS D. S. TRASK, a witness for the ship, "Helen R. Cooper," being duly sworn, testified.

Examined by Mr. Beebe:

Q. You know the ship "Helen R. Cooper?"
A. I do, sir.

Q. How large a ship is she?
A. About 700 tons.
Q. Do you know what water she draws?
A. Loaded, or at this time?
Q. At that time.
A. About 11 feet.
Q. Were you there on the morning that she started to go to sea?
A. I was there when she left the wharf?
130 Q. How long have you followed the sea?
A. 11 or 12 years.
Q. Have you been officer of a ship?
A. I have sir, in all capacities, from boy up to master.
Q. From before the mast to be captain?
A. Yes, sir.
Q. On that morning, in your judgement, was it prudent to take that ship out of port?
A. I thought it was.
Q. Had you any doubt of it?
A. I had no doubt about it.
Q. You did not go over in her?
A. I went over in the tug.
Q. You did not cross in the ship?
A. No, sir.
Q. You did not expect she was going to land on the New York side?
A. No, sir.
Q. By Mr. GOODRICH. You engaged the tug for the ship?
A. I did.
Q. And you assumed the responsibility of the tug going over to do what she was told to do, in pulling out that vessel?
131 A. I don't understand you exactly.
Q. You ordered the tug to go over there and take charge of the vessel?
A. Yes, sir.
Q. And she obeyed your orders and the orders of the pilot.
A. She did.

Cross-examined by Mr. Benedict:

Q. You were directed to do so by the owners of the ship?
A. No, sir.
Q. You represented the owners of the ship.
A. Yes, sir.
Q. Who was owner of the ship at that time.
A. My brother.
Q. Were you employed in his business at that time as clerk or otherwise?
A. If it is necessary I can tell the exact relationship.
Q. By the COURT. What did you have to do with the moving of this ship.
A. I ordered the pilot to go aboard, and ordered the steam-tug to go there.
132 Q. Mr. BEEBE. You were the superintendent and manager of the line?
A. Yes.
Q. By the COURT. It is your business, as the employé of your brother, to attend to this?
A. Yes, sir.

Q. By Mr. BENEDICT. Do you know how long the ship was?
A. No, sir; I can't give you her dimensions. I can get them very easily for you.
Q. How long did you stay on the wharf—Shinbone stores?
A. In Brooklyn you mean, sir?
Q. Yes.
A. Well, the crew were on board the steamboat till they got their luggage on board; and until the boat was made properly fast and hauled out, I was there.
Q. Did you stay there till she left the wharf—was cast off entirely, and under the control of the tug?
A. I did, sir.
Q. Did you see them start off—into the steamer?
133 A. Yes, sir.
Q. By the COURT. I understand you, you were in the tug?
A. No, sir; I came from New York on the tug.
Q. By Mr. BEEBE. At the time that you left the wharf, will you state whether the tug was pulling her head round?
A. She was pulling her head round.
Q. By Mr. BEEBE. Did there seem to be any difficulty about it?
A. There did not.
Q. By Mr. BENEDICT. You say the tug was pulling her head round. Where was the tug at the time with reference to the pier, above or below it?
A. I could not say positively whether the steamboat had pulled the ship above the pier, or whether the tide had been strong enough to set her below the pier.
Q. By the COURT. Did you pay any attention?
A. Not particularly.
Q. By the COURT. Did you watch her after she had cast off her stern line?
134 A. Till she got clear of the wharf—not any length of time. When I saw she was clear of the wharf, and on her way down, I returned to New York myself.
Q. By Mr. BENEDICT. Which ferry did you come over to New York?
A. I think it was the Catherine ferry.

Mr. Beebe rests the case on the part of the "Helen R. Cooper," reserving the right to call witnesses hereafter as to the ice in the river, and the propriety of taking the vessel to sea on that day.

Mr. Goodrich, for the steamboat R. L. Mabey, offers in evidence stipulation of counsel for ship "Helen R. Cooper," and rests his case.

135 *Rebuttal.*

JOHN FERRIN, a witness for libellant, being duly sworn, testified.

Examined by Mr. Benedict:

Q. What is your business?
A. Boatman.
Q. Have you been this morning sounding the bottom of the East River about pier 45?
A. Yes, sir.
Q. Where did you sound?
A. From pier 49 to pier 45.
Q. How far out into the river?
A. I went out about three ships' lengths.

Q. How many feet do you call that?
A. I can't say how many feet.
Q. By Mr. BEEBE. Do you mean ships' lengths, or ships' widths?
A. Ships' widths—broad.
Q. By Mr. BENEDICT. Can you tell at all how far out you sounded?
A. Well, I can't exactly tell; pretty near well out into the middle.
Q. By the COURT. How far out did you sound?
A. Pretty well out to the middle of the river.
136 Q. By Mr. BENEDICT. What is the bottom there?
A. I did not exactly take notice.
Q. You did not understand my question. What bottom is there there?
A. Mud.
Q. Any rocks there?
A. Not where we examined; no rocks at all.
Q. Where did you sound there?
A. Sounded all over there; sounded about 50 times all round there.
Q. Did you ever see vessels anchor there?
A. Yes, sir; I saw a big English steamship anchor out there.

Cross-examined by Mr. Beebe:

Q. Have you ever been in the Government employ taking sounding?
A. No, sir.
Q. Who employed you to do this?
A. The captain employed there; and I took a sailor with me to examine it, and I examined it, too.
Q. Who sounded?
A. I did some, and he some.
Q. How many times did you sound?
137 A. About 50 times.
Q. How many times did he sound?
A. About the same.
Q. That is 100 between you?
A. Yes, sir.
Q. What space did you sound over?
A. Pretty near half ways out.
Q. Half way to Brooklyn?
A. Yes, sir.
Q. How close to the pier did you sound? What do you call three ships' lengths?
A. A ship lying right alongside of the dock there, and right out.
Q. What did you sound with?
A. With a lead.
Q. You found mud there?
A. Yes, sir.
Q. Do you know anything about the formation of that bottom except that?
A. I don't know; I say it is mud there.
Q. You let a lead down and found mud?
A. Yes, sir.
Q. Can you tell how deep the mud was?
A. No, sir.
138 Q. By the COURT. Are you a boatman on the river?
A. Yes, sir.
Q. Are you accustomed to drag there?
A. Yes, sir.
Q. What do you consider the bottom to be?

A. I understand them to say there is not mud there all the time; there is gravel sometimes.

GALEN O. NORTON recalled.

Examined by Mr. Benedict:

Q. Is it customary, or not, in moving vessels about the harbor, to use more than one tug?

A. Well, it is in ships of much size.

Q. Is it customary in difficult times, as well as with large ships?

(Objected to.)

Q. How long have you been a master out of this port?

A. 25 years.

Q. What is the size of your ship?

A. It is 1088 tons.

139 Q. Have you ever had occasion to use two tugs with your ship?

A. I have.

Q. What is the reason for using two tugs?

A. You have a great advantage in moving the ship.

Q. If the tide, or the ice, or any such obstructions are in the way in moving a ship with one tug, is it or is it not prudent to employ another?

A. Yes, sir; I should certainly do so. If the tide was running or ice I should certainly employ the second tug to make it safe.

Cross-examined by Mr. Beebe:

Q. How many did you have employed that day—the 17th of February?

A. I did not employ a tug.

Q. How many were there employed for your vessel?

A. There was not any employed as I know of; they were engaged in the moving in case there was an opportunity to go to sea?

Q. Was there one engaged, or more?

140 A. I don't know how many there were engaged, whether one or two.

Q. Did you ever have two tugs hold of you?

A. Yes, sir.

Q. When?

A. I never move without two tugs.

Q. When have you moved with two?

A. Well, three times since I have been in this port, now.

Q. Small or large tugs?

A. Well, some were small and some larger.

Q. What tugs did you have this time that you say you had two?

A. I don't recollect the names; if it is necessary the bills will show.

Q. What were they—side-wheel or propeller?

A. Sometimes both.

Q. I am speaking about this time. You say you have been moved three times with two tugs each?

A. I don't recollect the names of the tugs?

Q. Can you tell whether they were propellers or side-wheel boats?

A. Some of them were propellers and some side-wheel.

141 Q. The first time you moved, was it propeller or side-wheel boats?

A. I think side-wheel.

Q. Can't you give me the name of either?

A. No, sir.

Q. Can you give me their power or size?

A. They were of sufficient power to move the ship with ice.

Q. By the COURT. Can you give the size of the tugs?
A. They were not the smallest, and they were not the largest.
Q. By Mr. BEEBE. Can you give me the power of those tugs, or their size?
A. No, sir.
Q. When you went into pier 45 on this occasion to load, how many tugs did you have?
A. I did not move the ship at that time.
Q. Did you have one or two?
A. I don't know.
Q. Does it not depend on the power of the tug?
A. Well, two small tugs will be better than one large one, be-
142 cause you will have the power on each side.
Q. Do you know the Hercules?
A. Yes, sir.
Q. Would she not have more power on a ship than two of these small tugs?
A. No, sir.

Libellants rests.

JOHN JOHNSON recalled.

Examined by Mr. Beebe:

Q. You know the tug "R. L. Mabey?"
A. Yes, sir.
Q. How long have you known her?
A. Ever since I have been in the port—10 or 12 years.
Q. What kind of a tug is she as to power?
A. She is what we call about our second-class boat.
Q. Take this ship at the time that she was taken into the stream by this tug, was there any necessity of having more than her to do it?
A. No, sir.
143 Q. Was it prudent to act with her?
A. Yes, sir.

Cross-examined by Mr. Benedict:

Q. Did you mean to say if there had been another tug on the other side of your ship you would not have been able to handle her any better?
A. I could not have got my ship into position.
Q. By the COURT. The question is whether, if you had another tug alongside of you, could you have kept off the docks?
A. After I got into clear water, if there was a steamboat alongside of me, I could have backed the ship, but I could not have got one into position to put her where I liked. I could not have got a tug alongside in the position that the ship lay to Brooklyn?
Q. After you got out?
A. I could have had one alongside after I got out.

144 MARTIN J. LYONS recalled.

Examined by Mr. Beebe:

Q. On that day how many tugs had you?
A. I had one, sir.
Q. You know the "R. L. Mabey?"
A. Yes, sir.
Q. Do you know the "Helen R. Cooper?"

A. Yes, sir.
Q. On that day was it prudent for that ship to start with the "R. L. Mabey" for sea?
A. I think it was.
Q. Have you any doubt about it?
A. I have none in my own mind.
Q. Did you see any ship that day with more than one tug?
A. I don't recollect seeing any ship towing down that day.
Q. Off pier 49, and so down to pier 45, out 300 feet from the piers of the East River, what kind of bottom is it?
A. It is rocky bottom.

Cross-examined by Mr. Benedict:

Q. How do you know it is?
A. I have sounded there.
Q. Have you sounded all over there?
145 A. Yes, sir; it is my business to know.
Q. You have learned everything by soundings that you know?
A. Of course, we have to learn by soundings.
Q. Don't know any other way?
A. No, sir.
Q. When have you sounded there?
A. Probably not within six or seven months; I have sounded very often.
Q. What for?
A. It is part of our business; going up and down the river we sound very frequently.
Q. For what?
A. For information.
Q. What sort of information do you want to get?
A. We want to find out how much water there is.
Q. Are soundings of the harbor down on the charts?
A. Yes, sir; close into the docks there may be a little mud lying on the rocks, but an anchor won't hold.
Q. By the COURT. How is it about an anchor holding?
146 A. An anchor won't hold once out of fifty times any place in the East River above the Fulton ferry.
Q. By the COURT. It is bad anchorage?
A. Yes, sir; it is bad anchorage.

GEORGE BURGER recalled.

Examined by Mr. Beebe:

Q. How many tugs had you that day?
A. I had one, sir.
Q. What was your tug?
. I don't remember what one it was; it was a propeller.
Q. Do you know the R. L. Mabey?
A. Yes, sir.
Q. Do you know the ship "Helen R. Cooper?"
A. Yes, sir.
Q. In your judgement, was it prudent to start with her with that ship for sea that day?
A. Yes, sir; I should have been very well content with her, and my boat was loaded.
Q. How does she rank as a tug?

A. As a second-class boat.
Q. That is next to the highest?
A. Yes, sir.
Q. What vessels would you rank amongst the highest class—the "Charles Chamberlain?"
147 A. Yes; she is a first-class boat.
Q. The "Achilles," and "Hercules?"
A. Yes, sir; we don't have any such boats as that now; as good as that; we have the Schultz and Seymour.
Q. This "Mabey" ranks next to them?
A. Yes, sir.
Q. This bottom of the East River; what kind of bottom is it from pier 49 to 45?
A. It is rocky bottom.

Cross-examination by Mr. Benedict:

Q. Have you ever sounded it?
A. Yes, sir; many times.
Q. When did you last sound it?
A. Probably not within two years.
Q. How many times did you cast the lead there?
A. In passing up and down we passed it probably 20 or 30 times; we sound as we go along.
Q. Going within your pilot boats?
A. Yes, sir.
Q. Where was your berth?
A. Anywhere; we don't confine ourselves to berths; we sail around the river to sound.
148 Q. By Mr. BEEBE. You are off and on more than anything else?
A. Yes, sir.
Q. By Mr. BENEDICT. Did you ever see a vessel anchored along in that neighborhood?
A. I have, sir; and I have been compelled to anchor there myself, but never have done so unless compelled.
Q. Did you ever see many vessels anchored there?
A. No, sir; because it is an unusual place to anchor.
Q. By the COURT. What do you say about the anchorage there—about vessels holding?
A. The vessels will not hold there; they are very apt to drag all over the river; never, unless in case we are compelled, do we anchor there.
Q. By Mr. BENEDICT. These vessels held that did anchor there?
A. There have been instances where they will hold; sometimes the anchor will catch under the ledge of a rock; I have seen a vessel hold there where they had to get three or four tugs to get the anchor out from under the rocks.
149 Q. Where was that?
A. Somewhere about 44, 45, or 46; the river is all the same there.
Q. All the river rocky?
A. I did not say that.
Q. The whole bed of the river there is rocky?
A. Yes, sir; it is considered very bad anchorage.

JOHN HOBBS recalled.

Examined by Mr. Beebe:

Q. Do you know the "R. S. Mabey?"

A. I do, sir.
Q. How many tugs did you have that day?
A. I had one, sir.
Q. Did you see any other vessel with more than one?
A. No, sir.
Q. You know the "Helen R. Cooper?"
A. I don't know the ship, sir; I may have seen her but I don't recollect.

Q. She was a 700-ton ship; in your judgement do you think it
150 safe for that ship to start with the "Mabey" alone that day?
A. I do, sir; being as the ship was in ballast.
Q. Light?
A. Light.
Q. Do you know the bottom of piers 45, 46, 47, 48, and 49, up along there?
A. Yes, sir.
Q. What kind of bottom is it?
A. A rocky bottom?
Q. Is it a good or bad anchorage?
A. It is very bad.

Cross-examined by Mr. Benedict:

Q. Where is that rocky bottom; all over the East River?
A. Not all over.
Q. Where is a place where it is not?
A. Well, from Catherine ferry up it is rocky.
Q. By the COURT. Is it good on this side above Fulton ferry?
A. No, sir; it is bad.
Q. By Mr. BENEDICT. Then above Catherine ferry, on the other side and Fulton ferry on this side, all over the river is bad?
151 A. It is, sir.

Testimony closed with the exception that counsel on either side may examine witnesses as to the points already reserved by counsel for the "Helen R. Cooper."

152 Ex. A.

U. S. district court.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER" &C., & THE S. B. "R. L. Mabey" &c.

It is hereby stipulated by and between the parties representing the claimants of the vessels respondents in the above action that said ship "Helen R. Cooper" shall and does hereby assume the conduct of the defence, and that all and any judgement ordered against the said vessels, or either of them, shall be assumed and paid by said ship "Helen R. Cooper."

New York, June 13th, 1867.

BEEBE, DEAN & DONOHUE,
Proct's for Cl'm'ts Helen R. Cooper.

(Endorsed:) U. S. district court. E. district. Joshua Atkins et al. vs. The Ship "Helen R. Cooper" & the S B "R. L. Mabey" &c. Stipulation. Emerson & Goodrich, proct's for "R. L. Mabey." Filed June 14th, 1867, at 1,30 p. m.

153 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Saturday, the 30th day of November, in the year of our Lord one thousand eight hundred and sixty-seven—

Present, the Honorable Charles L. Benedict, district judge.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER" & THE TUG "R. L. Mabey."

This case coming on to be heard on the allegations and proofs, and having been argued by counsel for the respective parties, and due deliberation having been had—

Now, on motion of Benedict & Benedict, proctors for libellants herein, it is ordered that the libellants recover against the ship "Helen R. Cooper," and the steam-tug "R. L. Mabey," the damages by them sustained by reason of the collision in the pleadings mentioned, with costs, and that it be referred to a commissioner to ascertain and compute the amount of said damages, and report the same to the court with all convenient speed.

CHA'S L. BENEDICT.

154 (Indorsed:) Vol. No. United States district court for the eastern district of New York. Joshua Atkins et al. vs. The Ship "Helen R. Cooper" & the Tug "R. L. Mabey." Interlocutory decree. Benedict & Benedict, proctors for libellants. Filed and entered the 30th day of November, 1867.

155 U. S. district court for the eastern district of New York.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER," HER TACKLE &c., & the Steam-tug "R. L. Mabey."

A decretal order having been entered in the above-entitled cause whereby, among other things, it was refer'ed to a United States commissioner to ascertain and compute the amount of damages due the libellants on account of the matters and things mentioned in the pleadings in this cause, and to report therein with all convenient speed:

Now, therefore, I, Charles W. Newton, United States commissioner for the eastern district of New York, to whom the said matter was referred, do report that I have been attended by the proctors of the respective parties, and by their witnesses, and have taken and considered the evidence or proof offered, and I do find that there is due the libellants at the date of this my report, for necessary repairs, &c., caused by the collision mentioned in the pleadings herein, the sum of nine
156 thousand five hundred dollars and forty cents, and for interest on said sum from March 24th, 1866, to this date, April 4th, 1868, the sum of thirteen hundred and forty-eight dollars and fifty-three cents—and that the said libellants are entitled to a demurrage of $125 per day for 35 days, which amounts to four thousand three hundred and seventy-five dollars—making the aggregate sum or whole amount due the libel-

lants at this date, fifteen thousand two hundred and twenty-three dollars and ninety-three cents.

All of which is respectfully submitted.

Dated Brooklyn, April 4th, 1868.

CHARLES W. NEWTON,
U. S. Commissioner.

(Endorsed:) U. S. district court E. D. Joshua Atkins et al. vs. Ship "Helen R. Cooper" & S. B. "R. L. Mabey." Commissioner's report. Filed and confirmed April 15th, 1868. S. T. Jones, clerk.

GENTS: Please take notice that we shall present the within report to this honorable court, and move the confirmation thereof on the
157 15th day of April, 1868, at the opening of the court.

April 10, '68.

Yours &c.

BENEDICT & BENEDICT,
Lib'lts Proct's.

To BEEBE, DEAN & DONOHUE, *Cl'm'ts Proct's.*
EMERSON & GOODRICH, *Cl'm'ts Proct's.*

158 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Friday, the 17th day of April, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Charles L. Benedict, district judge.

JOSHUA ATKINS AND EDWIN ATKINS
vs.
THE SHIP "HELEN R. COOPER," &c, & THE Steam-tug "R. L. Mabey," &c.

On reading and filing the report of Charles W. Newton, U. S. commissioner, to whom it was referred to ascertain and report the amount due the libellants, in accordance with the interlucatory decree in this cause, by which there is reported due the libellant herein the sum of fifteen thousand two hundred and twenty-three $\frac{93}{100}$ dollars, with proof of service of notice of the presentation of and motion to confirm said report; and no exception to the said report having been filed, and there being no opposition to the confirmation thereof—now, on motion of Benedict & Benedict, esq's, proctors for libellants, it is ordered, adjudged, and decreed that the said report be, and the same is hereby, confirmed, and that the said libellants, Joshua Atkins and Edwin Atkins, do recover herein against the said ship "Helen R. Cooper," &c., and the said steamtug "R. L. Mabey," &c., the said sum of fifteen thousand two hundred and twenty-three $\frac{93}{100}$ dollars, reported due as aforesaid, together with their costs herein taxed and adjusted at three hundred and thirty-nine $\frac{85}{100}$ dollars, making together the sum of fifteen thousand five hundred and sixty-three dollars and seventy-eight cents ($15,563 78) damages and costs, and that said vessels, their tackle, &c., be, and they are hereby, condemned thereof.

And on like motion it is further ordered that, unless an appeal
159 be taken from this decree within the time limited by law, the stipulators for costs and for value on the part of the claimants herein cause their stipulations to be performed, and that, in default thereof, the libellants have execution thereon to enforce satisfaction of this decree.

CHARLES L. BENEDICT.

(Indorsed:) Vol. No. United States district court for the eastern district of New York. Joshua Atkins & Edwin Atkins vs. The Ship "Helen R. Cooper" & the Steam-tug "R. L. Mabey," &c. Final decree and order confirming report of commissioner. Benedict & Benedict, proctors for lib'l'ts. Filed and entered the 17th day of April, 1868.

160 U. S. district court.

THE SHIP "HELEN R. COOPER," HER TACKLE, &C., *ads.* JOSHUA ATKINS ET AL.

GENTS: Please take notice that the claimants appeal from the decree of the district court in the above-entitled action, and every part thereof to the next term of the circuit court of the United States for the said district.

Dated April 21st, 1868.

Yours, &c.

BEEBE, DONOHUE & COOK,
Proctors for Appellant.

To S. T. JONES, Esq.,
Clerk, &c.

(Endorsed:) U. S. district court. The Ship "Helen R. Cooper," her tackle, &c., ads. Joshua Atkins et al. Notice of appeal. Beebe, Donohue & Cook, proctors for appellant. To S. T. Jones, esq'r., clerk. Filed April 22d, 1868.

161 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 6th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[L. S.] SAMUEL T. JONES, *Clerk.*

162 Circuit court of the United States for the eastern district of New York.

THE SHIP "HELEN R. COOPER," HER TACKLE, &c., The Union Navigation Company claimant & appellant, The Steam-tug "R. L. Mabey," her tackle, &c., Humphrey H. Crary claimant & appellant,
vs.
JOSHUA ATKINS & EDWIN ATKINS, LIBELLants & appellants.

To the Honorable Samuel Nelson, judge of the circuit court of the United States for the eastern district of New York:

The petition of the claimants and appellants in the above-entitled action respectfully states:

That, on the nineteenth day of Sept., one thousand eight hundred and sixty-six, the above-named libellants filed their libel in the district court of the United States for the eastern district of New York, against The Ship "Helen R. Cooper, her tackle, apparel, & furniture, and against The Steam-tug "R. L. Mabey," her tackle, apparel, & furniture, claiming damages for a collision exceeding the sum of fifty dol-
163 lars and upwards, and thereupon process was issued and duly executed. The petitioner, The Union Navigation Company, appearing and claiming the ship "Helen R. Cooper," her tackle, &c., and the petitioner appearing and claiming the steam-tug R. L. Mabey, her tackle, &c., and issue was duly joined:

That afterwards such proceedings were had in the said action that, by the judgment and decree of the said district court, the libellants were adjudged payment of their damages, caused by the said collision, and the above-named vessels were condemned to pay the same with costs.

That, in the giving of the said decree, there was manifest error in this, to wit, that the said decree should have been given in favor of the said claimants and against the libellants.

Your petitioners therefore appeal from the said decree and every part thereof to the next term of the circuit court of the United States for the eastern district of New York in the second circuit, to be held in and for the said district, and pray that the same may be heard on the proofs and allegations already in said action, and such additional
164 proofs and allegations as may be introduced, and they pray that the said decree and every part may be reversed and annulled, and that the petitioners may be hence dismissed with their costs in this behalf most wrongfully sustained.

BEEBE, DONOHUE & COOK,
Proctors for Appellants.

BEEBE, *Advocate.*

(Endorsed:) U. S. circuit court, E. D. of New York. The Ship "Helen R. Cooper," her tackle, &c., claimants, vs. Joshua Atkins & Edwin Atkins, libellants and appellants. Beebe, Donohue & Cook, proctors for appel'ts. Filed May 11, 1868.

165 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York in the second circuit.

THE SHIP "HELEN R. COOPER," HER TACKLE, &c., The Union Navigation Company claimant & appellant, & The Steam-tug "R. L. Mabey," her engine, &c., Humphrey H. Crary claimant' & appellants,
vs.
JOSHUA ATKINS & EDWIN ATKINS, LIBELLants & appellees.

Know all men by these presents that we, Benjamin J. H. Trask, jr., and Charles S. Larrabee are held and firmly bound unto the above-named Joshua Atkins & Edwin Atkins in the sum of five hundred dollars, to be paid to the said Joshua & Edwin Atkins; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and

severally, firmly by these presents, sealed with our seals, and dated the eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas, the above-named The Union Navigation Company & Humphrey H. Crary have prosecuted their appeal to the circuit court of the United States for the eastern district of New York, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named The Union Navigation Company shall prosecute *Humphrey H. Crary* to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

B. J. H. TRASK, J'R. [L. S.]
CHARLES S. LARRABEE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 11th day of May, 1868, before me.

JOHN G. OSBORNE,
U. S. Commissioner.

166 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Charles S. Larrabee, being duly sworn, depose and say, that he resides in the city of New York; that he is worth the sum of one thousand dollars *dollars* over and above his just debts and liabilities.

CHARLES S. LARRABEE.

Sworn to this 11th day of May, A. D. 1868, before me.

JOHN A. OSBORNE,
U. S. Commissioner.

(Indorsed:) Vol. , page . U. S. circuit court. The Ship "Helen R. Cooper," her tackle, &c., vs. Joshua Atkins et al. Bond for costs on Beebe, Donohue & Cook, proctors. Filed this 11th day of May, 1868.

Approved May 11th, 1868.

S. NELSON.

167 U. S. dist. court.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER" & THE TUG "R. L. Mabey."

We consent that Benedict & Benedict be substituted as proctors for the libellants herein.

Nov. 30th, 1867.

BENEDICT, TRACY & BENEDICT,
Libel'ts' Proct's.

(Endorsed:) U. S. district court. Joshua Atkins vs. The "Helen R. Cooper" & the "R. L. Mabey." Consent to substitute att'ys. Filed Nov. 30th, 1867.

168 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Wednesday, the 22d day of July, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Samuel Blatchford, district judge.

JOSHUA ATKINS & EDWIN ATKINS
vs.
THE SHIP "HELEN R. COOPER," HER TACKLE, &c., (The Union Navigation Company, claimants,) and The Steam-tug "R. L. Mabey," her engines, &c., (Humphrey H. Crary, claimant.)

A final decree having been made and entered in favor of the libellants in the above-entitled cause, on the 17th day of April, 1868, for the sum of fifteen thousand two hundred and twenty-three $\frac{93}{100}$ dollars damages and costs, and requiring the stipulators, on behalf of the claimants, to cause their stipulations for value, &c., given on discharge of the property arrested, to be performed, which decree has not been satisfied, nor the execution thereof stayed by an appeal with security:

Now, on motion of Benedict & Benedict, esq's, proctors for libellants, and in accordance with the order of the court of May 19th, 1868, directing that judgement be entered against the stipulators without further notice, unless the execution of decree be stayed by the giving of security within the time therein limited, and subsequently extended by the order of June 6, 1868, it is ordered that judgment be, and the same is hereby, entered upon the stipulations for value herein for the amount of the respective stipulations and interest, as therein provided, in favor of the libellants against the stipulators, as follows, to wit:

In favor of the said libellants, Joshua Atkins & Edwin Atkins, against The Union Navigation Company, claimant, and John K. Pruyn, surety, stipulators, for the agreed value of the said ship "Helen R. Cooper," &c., for $20,000, the amount of the stipulation, with $2,543 34 interest thereon from the date thereof, making in all the sum of
169 twenty-two thousand five hundred and forty-three dollars and thirty-four cents. Also, in favor of the said libellants, Joshua Atkins & Edwin Atkins, against Humphrey H. Crary, claimant, and Joseph McMurray, surety, stipulators, for the appraised value of the said steam-tug "R. L. Mabey," &c., for $5,000, the amount of the stipulation, with $456 94 interest thereon from the date thereof, making in all the sum of five thousand four hundred and fifty-six dollars and ninety-four cents.

And, on like motion, it is further ordered that the libellants have execution hereon to enforce satisfaction of the decree in this case.

SAMUEL BLATCHFORD.

(Indorsed:) Vol. . No. United States district court for the eastern district of New York. Joshua Atkins & Edwin Atkins vs. The Ship "Helen R. Cooper" and the Steam-tug "R. L. Mabey," her tackle, &c. Order. Benedict & Benedict, proctors for lib'l'ts. Filed and entered the 22d day of July, 1868.

170 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York in the second circuit.

THE SHIP "HELEN R. COOPER, HER TACKLE, &c., The Union Navigation Company, claimants & appellants, The Steam-tug "R. L. Mabey," her tackle, &c., Humphrey H. Crary, claimant & appellant,
vs.
JOSHUA ATKINS & EDWIN ATKINS, LIBELlants & appellees.

Know all men by these presents that we, The Union Navigation Company, John K. Pruyn, Benjamin J. H. Trask, and Joseph Kenyon, Charles S. Larrabee, Charles M. Case, William J. Smith, and James D. Fish are held and firmly bound unto the above-named Joshua Atkins & Edwin Atkins in the sum of thirty-one thousand dollars, to be paid to the said Joshua Atkins & Edwin Atkins; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named The Union Navigation Company & Humphrey H. Crary have prosecuted their appeal to the circuit court of the United States for the eastern district of New York in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named The Union Navigation Company & Humphrey H. Crary shall prosecute their appeal to effect, and answer all damages and costs if either shall fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

UNION NAVIGATION CO.,
By B. J. H. TRASK, J'R, *Pres't.* [L. S.]
B. J. H. TRASK. [L. S.]
JOHN K. PRUYN. [L. S.]
JOSEPH KENYON. [L. S.]
WILLIAM J. SMITH. [L. S.]
JAMES D. FISH. [L. S.]
C. S. LARRABEE. [L. S.]
C. M. CASE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 19th day of May, 1868, before me, by B. J. H. Trask, j'r, pres't, & by B. J. H. Trask, & on May 30th, 1868, by Joseph Kenyon, & on May 21st, 1868, by Larrabee & Pruyn.

S. T. JONES,
U. S. Commissioner.

& by Case, June 13th, 1868.

S. T. J., *U. S. Commissioner.*

& by Smith, July 3d, '68.

S. T. J., *U. S. Commissioner.*

Sealed & delivered, & taken & acknowledged, this 5th day of Sept., A. D. 1868, before me, by James D. Fish.

JOHN A. OSBORNE,
U. S. Commissioner.

171 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

John K. Pruyn, within named, being duly sworn, depose' and says that he resides in the eastern district of New York; that he is worth the sum of sixty thousand dollars over and above his just debts and liabilities.

JOHN K. PRUYN.

Sworn to this 21st day of May, A. D. 1868, before me.

SAMUEL T. JONES,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Benjamin J. H. Trask, one of the sureties mentioned in the within bond, being duly sworn, says that he resides in the eastern district of New York, and worth the sum of ten thousand dollars over and above his just debts & liabilities.

B. J. H. TRASK.

Sworn before me this 19th day of May, 1868.

SAMUEL T. JONES,
U. S. Commissioner.

(Indorsed:) Vol. , page . U. S. circuit court. The Ship "Helen R. Cooper," her tackle, &c., appellants, vs. Joshua Atkins et al., appellees. Bond for costs and damages on appeal. Beebe, Donohue & Cook, proctors. Filed this day of , 186 .

Approved Sept. 7th, 1868.

SAMUEL BLATCHFORD,
District Judge.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Joseph Kenyon, within named, being by me duly sworn, deposes & says that he resides in the southern district of New York, and is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

Sworn to before me this 20th day of May, 1868, by Kenyon, who omitted to sign the affidavit.

SAMUEL T. JONES,
U. S. Commissioner.

172 EASTERN DISTRICT OF NEW YORK, *ss:*

Charles S. Larrabee, one of the sureties on the annexed bond, being duly sworn, says that he resides in the city of New York, and is

worth the sum of ten thousand dollars over and above his just debts and liabilities; that he has no judgment against him; that he does business as a stock broker at 22 Broad street, in the city of New York. My property consists of cash and stocks. We have a cash capital of $40,000 in our business. H. A. R. Moore is the special, and H. S. Wright is the other general partner. I have personally seven thousand dollars in cash in the business. Our business is prosperous. I own fifty thousand dollars in good stocks at the board. I am surety for no one, except in this case.

C. S. LARRABEE.

Subscribed and sworn before me, May 21st, 1868.

SAMUEL T. JONES,
U. S. Commissioner.

173 EASTERN DISTRICT OF NEW YORK, *ss:*

Charles M. Case, one of the sureties in the annexed bond, being duly sworn, says that he resides at Mariner's Harbor, Staten Island, and that he is worth the sum of fifty thousand dollars over and above his just debts and liabilities.

C. M. CASE.

Sworn to this 13th day of June, 1868, before me.

SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

William J. Smith, one of the sureties in the annexed bond, being duly sworn, says that he resides in the city of New York, and that he is worth the sum of thirty thousand dollars over and above all his debts and liabilities.

WILLIAM J. SMITH.

Sworn this 3d day of July, 1868, before me.

SAMUEL T. JONES,
U. S. Commissioner.

174 U. S. circuit court, eastern district.

THE SHIP "HELEN R. COOPER, HER TACKLE, &C., &C.,
vs.
JOSHUA ATKINS ET AL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James D. Fish, one of the sureties on appeal in the above-entitled action, being duly sworn, says that he is worth the sum of thirty thousand dollars over and above his just debts and liabilities; that there are no judgments against him, to the best of his knowledge & belief; that his property consists in part of the house and lot No. 81 Bridge st., and the premises No. 157 Pearl st., in the city of Brooklyn, bank stock, railway bonds, &c.

JAMES D. FISH.

Sworn to before me this 5th day of Sept., 1868.

JOHN A. OSBORNE.
U. S. Commissioner.

175 United States circuit court, eastern district of New York, June 18th, 1870.

JOSHUA ATKINS ET AL.
vs.
THE SHIP "HELEN R. COOPER" & THE TUG "R. L. Mabey."

The appeal in this case coming on to be heard, and having been argued by counsel for the respective parties, and due deliberation being had: Now, on motion of Benedict and Benedict, proctors for the libellants herein, it is ordered that the decree of the district court herein be, and the same is hereby, affirmed, with costs.

And it is further ordered that unless an appeal be taken from this decree within the time limited by the rules and practice of this court, the stipulators on the appeal herein cause their stipulations to be performed.

L B. WOODRUFF,
Circuit Judge.

JUNE 29TH, 1870.

176 U. S. circuit court. Joshua Atkins et al. vs. The Ship "Helen R. Cooper," &c. Decree. Benedict & Benedict, lib'l'ts' proct's. Form correct. June 21st, 1870. B., D. & D. Filed July 6th, 1870.

177 To the honorable the Supreme Court of the United States:

The petition of appeal of The Union Navigation Company respectfully shows:

That, on or about the 27th day of September, 1866, Joshua Atkins and Edwin Atkins duly filed their libel in the district court of the United States for the eastern district of New York, as owners of the ship "Isaac F. Chapman," against the ship "Helen R. Cooper," then owned by your petitioners, claiming to recover damages alleged to have been sustained by the said ship "Isaac F. Chapman" through collision with the said ship "Helen R. Cooper."

That, thereafter, your petitioners duly appeared, by their proctors, and duly answered in said cause; and upon the execution of the bond required by the act in such case made and provided, said ship "Helen R. Cooper" was duly delivered to them.

That such proceedings were thereupon had that it was by the said district court ordered, adjudged, and decreed that the libellants aforesaid recover against the said ship "Helen R. Cooper" the sum of fifteen thousand two hundred and twenty-three $\frac{93}{100}$ dollars and
178 costs to be taxed; and that, thereafter, said cause was heard anew, on the appeal of your petitioners, by the circuit court of the United States for the eastern district of New York, and, after due deliberation the said decree of the said district court was, by said circuit court, thereby affirmed, with costs.

That your petitioners are advised and insist that the said decree is erroneous, in that said decree should have been in favor of your petitioners, and for libellants as aforesaid, and that, therefore, the same should be reversed.

Wherefore your petitioners pray that this honorable court would be pleased to hear said cause anew upon the pleadings and proofs already taken in said cause, and upon such further proofs and allegations as may be presented to this honorable court, and to reverse and annul

said decree, and to pronounce in favor of your petitioners, and for their costs, and for such other and *deficient* relief in the premises as shall to law and justice appertain.

And your petitioners will ever pray.

BEEBE, DONOHUE & COOK,
App'l't's Proct's.

179 (Indorsed:) U. S. Supreme Court. The ship "Helen R. Cooper," her tackle, &c., The Union Navigation Company, app'll', vs. Joshua Atkins, app'llee. Petition of appeal. Beebe, Donohue & Cook, app'l'ts' proct's.

We admit due & timely service of a copy of the within.
Dated July 18th, 1870.

BENEDICT & BENEDICT,
Lib'l't's Proct's.

Filed July 18th, 1870.

180 By the Honorable Lewis B. Woodruff, one *one* of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit, to Joshua Atkins & Edwin Atkins:

Whereas The Union Navigation Company, claimants of the ship "Helen R. Cooper," lately appealed to the Supreme Court of the United States from a decree rendered by the circuit court of the United States for the eastern district of New York, made in favor of you, the said Joshua Atkins & Edwin Atkins, as libellants and appellees, against the ship "Helen R. Cooper," of which ship said Union Navigation Company are the claimants and appellants, and have filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn, in the eastern
181 district of New York, on the eighth day of July, in the year of our Lord one thousand eight hundred and seventy, and of independence the ninety-fifth.

L. B. WOODRUFF,
Circuit Judge.

182 (Indorsed:) U. S. Supreme Court. The Ship "Helen R. Cooper," The Union Navigation Company, cl'm'ts & appel's, vs. Joshua Atkins et al., lib'l't, app'llee. On appeal. Beebe, Donohue & Cook, app'l'ts' proct's.

We admit due & timely service of a copy of the within.
Dated July 18th, 1870.

BENEDICT & BENEDICT,
Lib'l'ts' Proct's.

Filed July 18th, 1870.

183 *Bond for costs & damages.—On appeal.*

Supreme Court of the United States of America, *for the eastern district of New York in the second circuit.*

THE SHIP HELEN R. COOPER, HER TACKLE, & The Union Navigation Company, cl'm'ts & app'lt's,
vs.
JOSHUA ATKINS ET AL., LIB'L'T & APPELLEE.

Know all men by these presents that we, The Union Navigation Company, and John K. Pruyn, and James D. Fish, are held and firmly bound unto the above-named Joshua Atkins et al., in the sum of thirty-one thousand and six hundred & fifty dollars, to be paid to the said Joshua Atkins et al.; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named Union Navigation Company, claimant, have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Union Navigation Company shall prosecute their appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE UNION NAVIGATION CO. [SEAL.]
M. W. DERHAM, *Sec'y.* [SEAL.]
B. J. H. TRASK. [SEAL.]
JOHN K. PRUYN. [SEAL.]
JAMES D. FISH. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 30th day of June, 1870, before me, as to Trask, John K. Pruyn, & James D. Fish.

EDWARD L. OWEN,
U. S. Commissioner.

Sealed & delivered & acknowledged, this 6th day of July, 1870, before me, as to The Union Navigation Company.

EDWARD L. OWEN,
U. S. Commissioner.

184 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

John K. Pruyn and James D. Fish, being duly sworn, each for himself, depose and says that he is worth the sum of fifty thousand dollars, over and above his just debts and liabilities; and that they reside in the State of New York.

JAMES D. FISH.
JOHN K. PRUYN.

Sworn to this 30th day of June, A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

(Indorsed:) Vol. , page . U. S. Supreme Court. The Ship Helen R. Cooper, her tackle, &c. Union Nav. Co. app'l'ts, vs. Joshua Atkins, appellee. Bond for costs & damages on appeal. Beebe, Donohue & Cooke, proctors.

Approved July 8th, 1870.

L. B. WOODRUFF,
Circuit Judge.

Filed this 18th day of July, 1870.

185 To the Honorable the Supreme Court of the United States:

The petition of appeal of John Caldwell, executor, and Rachel Corwin, executrix of the last will and testament of Humphrey H. Crary, deceased, respectfully shows:

That, on or about the 27th day of September, 1866, Joshua Atkins and Edward Atkins filed their libel in the district court of the United States for the eastern district of New York, against the ship "Helen R. Cooper," her tackle, &c., and against the steamboat "R. L. Mabey," her machinery, tackle, &c., setting forth that, on the 17th day of February, 1866, while the libellants' ship "Isaac F. Chapman" was lying at her wharf, in the East River, she was injured by a collision, which occurred with the ship "Helen R. Cooper," while in tow of the steamboat "R. L. Mabey," under the circumstances set up in the libel.

Humphrey H. Crary, as claimant of said steamboat, duly intervened.

186 Whereupon said vessel was appraised at $5,000, for which sum he gave a bond, and said vessel was duly delivered to him; that the claimant duly answered, denying the statements of the libel, and setting out that the collision occurred under the circumstances set out in his separate answer, and without fault on the part of the steamboat "R. L. Mabey," or those on board of her; that said claimant has since died, and your petitioners, who have been appointed executors of his estate, have duly qualified as such.

That such proceedings were had, that the cause was tried before the district court of the United States for the eastern district of New York, and a decree rendered on the 17th day of April, 1868, condem'ing the ship "Helen R. Cooper" and the steamboat "R. L. Mabey" for the damages conjointly, and awarding the libellants the sum of $15,223 93 and costs to be taxed.

That, from that decree, an appeal was taken to the circuit court of the United States for the eastern district of New York, and

187 such proceedings were had that, on the 29th day of June, 1870, the said circuit court did affirm the said judgment, with costs.

That your petitioners are advised, and insist that the said decrees of the district and circuit courts, respectively, are erroneous, in so much and in all such parts as they hold the "R. L. Mabey," or the claimant, in fault, or liable in any way for damages for such collision, or the injury to the libellants, and they appeal to the Supreme Court of the United States therefor.

Wherefore the appellants and petitioners pray that the said Supreme Court may proceed to hear said cause anew on the pleadings and proofs

taken therein, and such further proofs and allegations as may be offered, and to reverse and annul said decree of the circuit court in so much and such parts thereof as in any way hold the steamboat "R. L. Mabey" liable or responsible for any damage of the libellants by the collision in the pleadings mentioned, and such part or parts as in any wise
188 decrees or orders the payment of the damages by the said "R. L. Mabey" or the claimants thereof for any damages sustained by the libellants, Joshua Atkins and others, and that this honorable court would afford such other and further relief as to law and justice appertain.

And your petitioners will ever pray, &c.

Dated New York, Sept. 23, 1870.

WM W. GOODRICH,
App'l'ts Proctor.

(Endorsed:) U. S. circuit court, E. D. Joshua Atkins & another vs. The Steamboat "R. L. Mabey," &c. Petition of appeal. W'm W. Goodrich, app'l'ts' proctor, 59 Wall st., N. Y. Due service of a copy admitted Sept. 23, 1870. Filed Sept. 30th, 1870.

189 By the Honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the eastern district of New York in the second circuit.

JOSHUA ATKINS & EDWARD ATKINS:

Whereas John Caldwell, executor, and Rachel Corwin, executrix of the last will and testament of Humphrey H. Crary, deceased, claimant of the steamboat "R. L. Mabey," lately appealed to the Supreme Court of the United States from a decree rendered by the circuit court of the United States for the eastern district of New York, made in favor of you, the said Joshua Atkins & Edward Atkins, as libellants and appellees, against the steamboat "R. L. Mabey," &c., of which steamboat Humphrey H. Crary, deceased, was claimant, and John Caldwell, his executor, and Rachel Corwin, his executrix, are appellants, and have filed the security required by law:

You are therefore to appear before the said Supreme Court of the United States at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be
190 done in the premises.

Given under my hand at the city of Brooklyn, in the eastern district of New York, on the first day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-sixth.

L. B. WOODRUFF,
Circuit J.

(Indorsed:) U. S. Supreme Court. The Steamboat "R. L. Mabey," John Caldwell, ex'r, & al., app'l'ts, vs. Joshua Atkins & al., lib'l't, appellee. Citation on appeal. Filed Nov. 1st, 1870.

191 *Bond for costs & damages on appeal.*

Supreme Court of the United States of America.

THE STEAMBOAT "R. S. MABEY," HER tackle, &c., John Caldwell, executor, and Rachel Corwin, executrix of Humphrey H. Crary, deceased, claimant, appellants,
vs.
JOSHUA ATKINS & AL., LIBELLANTS, appellees.

Know all men by these presents that we, John Caldwell and William Foulks, are held and firmly bound unto the above-named Joshua Atkins & al. in the sum of ten thousand dollars *dollars*, to be paid to the said Joshua Atkins & al.; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named John Caldwell, ex'r, & Rachel Corwin, ex'x, have prosecuted their appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named John Caldwell & Rachel Corwin shall prosecute their appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN CALDWELL. [L. S.]
JOHN CALDWELL. [L. S.]
WILLIAM FOULKS. [L. S.]

Sealed and delivered, and taken and acknowledged, this 31st day of Oct., 1870, before me.

THO'S A. MASTERSON,
Notary Public N. Y. Co.

192 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

John Caldwell and William Foulks, each for himself, being duly sworn, deposes and says that he is worth the sum of ten thousand dollars over and above his just debts and liabilities, and that he is a resident of the city of Brooklyn.

WILLIAM FOULKS.
JOHN CALDWELL.

Sworn to this 31st day of Oct., A. D. 1870, before me.

THO'S A. MASTERSON,
Notary Public N. Y. Co.

Approved November 1st, 1870.

L. B. WOODRUFF,
Circuit J.

(Indorsed:) Vol. , page . U. S. Supreme Court. The Steamboat "R. S. Mabey," her tackle, &c., John Caldwell, ex'r, & al., app'l't, vs. Joshua Atkins & al., appellees. Bond for costs & damages on appeal. W'm W. Goodrich, proctor. Filed this day of , 186 . Approved Oct. 31, 1870. Benedict & Benedict, proc's for appellees. Filed Nov. 1st, 1870.

193 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Charles W. Newton, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Brooklyn, in the eastern district of New York, this 12th day of September, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] CHA'S W. NEWTON, *Clerk.*

(Indorsement on cover:) No. 377. The Steam-tug "R. L. Mabey," &c., John Caldwell, ex'or, & Rachel Corwin, ex'ors, &c., appellants, vs. Joshua Atkins, Edwin Atkins, owners of the ship "Isaac F. Chapman;" and, No. 378, The Ship Helen R. Cooper, her tackle, &c., The Union Navigation Company, cl'm't, appellants, vs. Joshua Atkins & Edwin Atkins, &c. E. New York C. C. U. S. Filed 10th December, 1870.

U. S. Supreme Court.

THE "H. R. COOPER," her tackle, &c., and R. L. MAYBEE,
Appellant,
ads.
JOSHUA ATKINS, *et al.*,
Appellees

This is an action for damage sustained by libellants in a collision between the ship "H. R. Cooper," in tow of a steamtug, and the libellant's vessel the J. T. Chapman, lying at the wharf, pier 45, East River.

The facts are that the J. T. Chapman was lying at Pier 45, E. R., on the upper side of the pier, and the "H. R. Cooper," had been lying at Shin Bone Stores, Brooklyn, both ready for sea.

The "H. R. Cooper" started in tow of the tug for sea, and while being rounded to to head down the river as the claimants allege, the tug was embarrassed by a ferry-boat passing ahead of her, and by the tug stopping the "H. R. Cooper," which had considerable way on, and had not got headed around, being left without motive power covld not avoid the collision, although she made

all the efforts in her power, by dropping her anchor, and otherwise.

The libel (fol. 5) shows the grounds of fault charged by the libellants, and this claim has not been altered.

1. Going to sea under the circumstances.

2. In going so rapidly.

3. In towing with so long a line, instead of alongside.

4. In proceeding so close to the shore, contrary to the act of the Legislature.

5. In allowing the "H. R. Cooper," to sheer inside the line of the piers.

6. A general allegation of fault in permitting the collision to take place.

These are the sole faults attributed in the libel, and remain as the libellant first stated them.

The allegation of the amended answer of the ship is (fol. 38), that the ship was being properly turned, and proceeding, when a ferry boat suddenly passed ahead of the tug and compelled her to stop; that the tug lost control of the ship, and the ship at once dropped her anchor.

There was a decree against both the tug and the ship in the District Court, which was affirmed in the Circuit. From this the claimants appeal.

First.—Both the parties are to be bound by their allegations as contained in the pleadings on which the case was tried, and on which it is now before this Court, and if there is no fault to be found or attributed to the ship on those pleadings, which are sustained by the proofs, the libel must be dismissed.

Second.—As matter of fact no fault appears in the evidence on either of the statements of faults made in the Libel.

1. In going to sea under the circumstances. On this it is submitted that the testimony is all on one side, the witnesses on the side of the Libellant ~~are the~~ only ~~witnesses~~, and their testimony does not prove the time improper. As matter of fact to sustain our position on this point, it is evident that no collision would have taken place, and no loss happened, but for the interference of the ~~tug~~. This was an accident, as likely to happen at one time as another, and if the fact, ends the allegation (fols. 67, 130).

2. There is no evidence whatever to prove the second ground, the evidence on their side on any such allegation is wanting, and ours disproves it. (fols. 101, 102).

3. The evidence is clear on this ground, towing by a hawser or line is usual, and any other way would be unusual (fols. 71, 67).

4. The fourth statement of offence is void in law and bare of fact, the act against which it is alleged to have been offence does not apply. See act 1848, §

As matter of fact it is not correct. Our evidence shows that it was not in sailing down, but in turning, and if you could only turn a large ship in the middle of the river, you could never turn (fols. 67, 70).

5. In regard to the fifth, it is only necessary to say that it raises the whole question in the cause.

If the H. R. Cooper, without accident, and without excuse, went inside of the pier, then it is clear that we are wrong, but if it is true that the cause of the loss is as claimed, then the reason we got inside the pier is a cause beyond our power to prevent, and this is fully made out.

6. The sixth ground is one that is entirely too general, and cannot be sustained; it begs all question of fault, by making an allegation, in substance, that we cannot find fault with anything we saw, but it must have been fault.

Third.—The cause of the collision is, so far as we are concerned, an inevitable accident, and such an one as we could not guard against. See the testimony Johnson, fol. 77–8. Smith, 111. It was no fault of ours that the ferryboat embarrassed the tug, and had

there not been a cake of ice in the river, that embarrassment would have been equally as great. No absence or presence of ice had ought to do with this.

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Fourth.—The ship was under the control and management of the tug, and ~~we are~~ she is not responsible for the acts or faults of the tug; and it is no cause to hold ~~us~~ her responsible that our clients assumed the defence of the tug, because if the collision happened by our fault, the tug should be discharged, and yet she is held. It is not good sense to hold the ship responsible and the tug both in the case, if the fault is on the one or the other the Court must say so, and no matter what want of proof there may be on the part of either. That cannot hold one who fails to make that proof, and also hold one who makes out all absence of fault.

Fifth.—No after acquired intelligence of fault can be set up against us, not stated in the libel, and not a proved allegation here. This is not only good sense but justice. It is clear that if any such ground existed at the time the libel was filed, it would have been set up. If the libellant looked on and saw what took place, they knew what faults they had to allege. Thus applies to the alleged want of second tug.

The same is true of the fact alleged, that our wheel was starboarded, and not ported. The evidence on this is clear.

If it needed any further reason to show this, we do, by showing that the after made allegations of starboarding and second tug, are without foundation. 143, 144, 146, 149.

Sixth.—If both the tug and ship are in fault, the loss should be equally divided between them. See the Atlas.

We respectfully submit that the accident is one that arose without fault fault on our part, and that the libel ought certainly as to the ship be dismissed.

BEEBE, DONOHUE & COOKE,
Proctor for Claimants and Appellants.

CHAS. DONOHUE,
Of Counsel.

SUPREME COURT

OF THE UNITED STATES.

The Steamtug "R. L. Mabey," &c., John Caldwell, Executor, and Rachel Corwin, Executrix, &c., *Appellants,* *vs.* Joshua Atkins, et. al., *Libellants and Appellees.*	No. 173.
The Ship "Helen R. Cooper, her tackle, &c., The Union Navigation Co., *Claimants and Appellants,* *vs.* Joshua Atkins, et al., *Libellants and Appellees.*	No. 174.

Brief and Points for the Libellants and Appellees in the above cases.

On the 17th of February, 1866, the ship "J. F. Chapman," owned by Joshua Atkins & Co., was

lying at Pier 45, East River, in the harbor of New York, ready for sea. She lay on the eastern side of the pier, head in, her stern being about 20 feet inside of the end of the pier. About 15 minutes past 2 P. M. on that day she was run into by the ship "Helen R. Cooper," which was at the time in tow of the steamtug "R. L. Mabey," and seriously injured.

A libel being filed against both the ship and the tug, both vessels were held liable by the District Court. The decision is reported in 2 Benedict's Reports, p. 67. This decree was affirmed by the Circuit Court, whose decision is reported in 7 Blatchford, C. C. R., p. 378, and appeals from that decree have been taken by the claimants of each vessel.

FIRST POINT.

As to the appeal taken by the tug, it is to be noticed.

1. That no appeal was taken in her behalf from the decree of the District Court. The ship having assumed her defence, (fol. 152), she had no further care of the controversy and took no appeal.

It would seem, therefore, that she was in no situation to take an appeal from the decree of the Circuit Court, and that her appeal ought to be dismissed.

2. That, if her appeal is to be considered, she has furnished no evidence to support the defence which she has alleged in her answer, and has not alleged any such defence as the ship has attempted to prove.

If a case is to be determined according to allegations *and* proof, her case is fatally defective in one or the other respect.

SECOND POINT.

The ship is not in exactly the same predicament, but she has furnished defensive allegations which contradict each other, and proofs which fail to sustain either defence.

a. Her first answer was verified May 2, 1867. In this, the sole defence set up was that the ship was "unexpectedly caught in an immense field of floating ice." (Fol. 28).

An amended answer was verified Oct. 11, 1867. This answer abandons entirely the defence of the first answer, even contradicting it in material points, and sets up as a defence that "a ferry boat suddenly and improperly crossed the bows of the tug," (fol. 37-38), caused her to stop and thus caused the collision.

b. The evidence of the pilot as to the cause of the collision is as contradictory as the two answers.

> "When the tug slacked up the ship's head canted to the northward more."
>
> *Q.* What canted your head to the northward?
>
> *A.* "*The ice on the stern of the ship.*" (Johnson, fol. 87).
>
> *Q.* And the ice on your starboard quarter is what swung you into the dock?
>
> *A.* Yes, sir. (*id.* fol. 89).
>
> *Q.* What shot the ship on to the New York shore?

A. The *stoppage of the steamboat* to avoid a collision with the ferry-boat.

Q. Before the tug stopped she was heading on the New York shore?

A. She had her head on the New York shore.

Q. After he slacked his line *she shot right along?*

A. Certainly. (*id.* fol. 98).

THIRD POINT.

The claim of the ship is that the collision was the result of inevitable accident.

She labors under a two-fold difficulty at the outset.

1. Her own answers do not agree as to the cause of the accident. She charged it upon a field of ice when her first answer was put in, in May, 1867, and it was

not 'till October, 1867, that the amended answer charging it to the ferry-boat, was put in.

This present defence was clearly an after-thought, and Courts always look with suspicion on after-thoughts.

2. Her co-defendant sets up no such defence. Yet the defence is one which must be applicable to both the tug and the ship, if it had any existence at all. It is one whose existence must have been better known to the tug than to the ship, and the fact, that the tug does not set it up but charges the collision to be the result of negligence on the part of the ship, throws the strongest suspicion upon it, as set up by the ship.

This suspicion is still further strengthened by the subsequent conduct of the cause. The tug having made this charge upon the ship, the latter, by agreement, takes upon herself all the responsibility of the litigation, (fol. 152) and then fails to put before the Court any evidence from the tug as to the occurrence in question.

The inference is irresistible that her owners knew that those witnesses would

not sustain their theory of the defence, but would show negligence on the part of the ship, and that they took this course to keep this evidence from the knowledge of the Court. This they have succeeded in doing, but they cannot avoid the conclusions to which such a course of conduct on their part necessarily exposes them.

FOURTH POINT.

But this ferryboat is a myth. If she were not, she would have appeared earlier. She would have been brought forward by Mr. Trask, the agent of the ship, when he was asked by Captain Norton, at the time of the collision, how the ship came in there. (Norton, 50). Or, if not then, certainly she would have appeared when the first answer was sworn to. It is not credible that the owner of the ship who swore to the answer had never inquired the cause of the collision; nor is it credible that, having inquired, he should have heard

nothing of this ferryboat, or should have forgotten all about her, if she was the cause of it.

If she had any real existence, why did she not appear in the answer of the "Mabey," which was nearest to her, and which, as is alleged, stopped to avoid running into her, and only escaped her by 10 or 15 feet, and that by allowing the ship she had in tow to run into the docks?

If she was the cause of this collision how can the contradictory stories told about her position and course, by the Captain of the "Cooper" and the Pilot, be accounted for?

Johnson, the Pilot, swears that she crossed the bows of the "Mabey," which was then heading *N. W. on New York*, (fol. 77), the ship then being abreast of pier 49, (fol. 78), and about half way across the river, (fol. 77), and that she went between them and the New York shore, having them on her starboard hand. (fol. 46).

The Captain, on the other hand, testifying *in New York*, (verification, fol. 120), says she crossed the bows of the "Mabey" which was then heading "*to the southward more towards the ice*," (cross-examination of Smith, fol. 118), and went *outside* of the tug, that is, between the tug and Brooklyn.

Or how is the fact to be accounted for, that, while the witnesses from the tug must have been, from their position, the very best witnesses to prove the existence and movements of this ferryboat, and while the ship, by assuming the responsibility of the defence, had done all in her power to make those witnesses disinterested, still she failed to call one of them to support her allegations?

In view of these suggestions can there be any doubt that this alleged ferryboat, whom nobody knows, of whom no one can tell whence she came or whither she went, is, as far as having any relation to this collision is concerned, as unsubstantial as the Flying Dutchman.

FIFTH POINT.

But if we admit that there was a ferryboat in the river, her presence alone is no defence, and therefore the ship has alleged that this ferryboat "*suddenly and improperly* crossed the bows of the tug." (fol. 37). This allegation is however left entirely unsupported by proof. There is not to be found in the case a scintilla of evidence that whatever movement was made by any ferryboat on that occasion was either sudden or improper.

Where did she come from? Where was she going to? What course did she pursue? What course should she have pursued? Did she make any change in her course, and if so, what and where and when? All these are facts which must be proved to the Court, before the Court can determine that her crossing the bows of the tug was either sudden or improper, and on all these particulars the Court is left entirely in the dark.

Without the elements of suddenness and impropriety in the movements of the ferryboat, the case is left upon the ordinary movements of such boats. The Court, therefore, is asked to hold that an ordinary movement of a Brooklyn ferryboat is an inevitable accident, and that this ship is not liable for the consequences, resulting to an innocent third party from her failure to provide for and guard against such ordinary movement.

SIXTH POINT.

It is plain enough from the testimony of Captain Smith that the ship desired as soon as possible to get out of the ice into the clear water, which led

them to go over to the New York side, and then the tug had not sufficient power in that narrow space to keep the ship off from the docks. He admits himself that if it had not been for the ice they would naturally have gone down in the middle of the river, (fols. 114-117). Their not doing so accounts naturally for the result, without raising up any ferryboat to account for it.

SEVENTH POINT.

There are various errors plainly visible on the part of the ship.

a. It was error, recklessness, to go to sea at all when she did.

The evidence is uncontradicted that this vessel was the only one which left that part of the harbor while the ice was running. It does not in the least alleviate this negligence to show that steamers sailed from the North River on that day, or that other vessels left the lower part of the East River *at slack water before the ice began to run.*

This vessel was going down when the tide was about half ebb, (fols. 45, 123), for the slack water was at 11 and the collision was at 2.15, (fols. 51, 57). The Captain's inquiry of the Pilot whether he thought it safe to take the vessel to sea, (fol. 110), shows that he had doubts about it at the time, which the result fully justified.

b. If the ship must go to sea when she did, it was negligence not to have had a second tug. All the witnesses agree that a tug alongside would have averted the collision. If the condition of things was such in the river that the ship was compelled to go in such dangerous proximity to the piers, and that the crossing of a ferryboat, which is always to be expected in that part of the river, made the difference between safety and the injury which she actually wrought, that should have been foreseen and guarded against by having a tug alongside.

No excuse is given for not having another tug alongside.

The Pilot, Johnson, it is true, says that it was prudent to act with the "Mabey" alone, (fol. 143). But he

admits that if he had had a tug alongside he "could have backed the ship," (fol. 143), and admits that he "could have had one alongside after he got out." (*id.*)

Lyons, Burger and Hobbs, also say it was prudent. But they are speaking from *their* experience on that day and not from the facts as they existed at this time. They had no ice where they were, and went out at slack water. They do not speak at all as to the prudence of having but one tug to take this ship out on the ebb tide, and when the river was full of floating ice.

This leaves the evidence, as to the prudence of having but one tug under the circumstances of this case, confined to Johnson, for the claimants, and Captain Norton, for the libellants, (fols. 138, 139). We submit that, when the admissions of Johnson, that a tug alongside could have backed the ship, are considered, Captain Norton's evidence is clearly entitled to be credited, and the fact that the "Mabey" was not able to handle the "Cooper," and that the collision did occur, is the strongest possible confirmation of his judgment.

c. There was also, on the Pilot's evidence, clearly negligence in the navigation of the tug. On his direct examination he swears that the tug was at right angles with his vessel, and that "that was the *best and only* way to keep the head of the "Cooper" from the New York shore. (Fol. 79, 83).

On his cross-examination he swears she was not at right angles with his vessel, for "if she had been she would have pulled me out." (Fol. 95). This evidence leaves the claimants in this dilemma: either the tug was at right angles or she was not. If she was, she was in fault in not pulling the head of the "Cooper" out from the New York shore. If she was not, she did not tow her in the *only* way that would keep her from the New York shore.

In either case, she was negligent and is chargeable.

d. It was negligence not to have let go the anchors sooner. The Pilot's estimate of where they were let go, is valueless in comparison with the fact of their coming up with a perpendicular chain as the vessels lay together; and if this

was not the fact, why was not Mr. Trask, who saw them come up, called to prove the contrary? (Fols. 49, 50).

It may be bad anchorage there, as indeed the whole bed of the East River is rocky. Yet that vessels do anchor there when they have occasion all the witnesses agree, who are asked on that point.

And after all, with the best anchorage in the world, an anchor with a perpendicular chain, in seven or eight fathoms of water, cannot hold much.

And with the worst anchorage in the world, a ship will not drag her anchors so that the chain is perpendicular, unless it is so short as only to just touch the bottom, which would of itself be gross negligence.

EIGHTH POINT.

The general aspect of the whole case decides it. When the tug first took hold of the ship the Pilot says it could not control her, so that both vessels

drifted down the river to "abreast of Jackson street ferry on the Brooklyn side." (Fol. 93). They then attempted to cross diagonally, but in getting through the ice, accumulated by the flood tide and now running down on the ebb, they failed to turn her head far enough down the river, and thus ran her head into the "Chapman."

The claimants allege that 20 feet of ice was sufficient to turn her stern down and that under influences which she could not resist, she rushed out of the ice rapidly toward the New York shore and into the "Chapman," and although she was light (in ballast) still she dragged both her anchors several hundred feet without apparently checking her velocity and without much feeling her helm! Such a story is too extraordinary. Both vessels must take the consequences of a negligence which was as gross and reckless as it was destructive. The ship was the *Dux facti*. It was her job, but the tug, undertaking the service, at the risk of the ship, is none the less to blame. She had no right, no matter what guarantees she had, to undertake this dangerous service, single handed, in a port whose piers were lined with valuable ships and cargoes, fastened fore and aft, and helpless alike to resist or to escape.

NINTH POINT.

The law is well settled in relation to such cases.

"Where the question of fault in a collision lies between a vessel at a wharf, out of the track of other vessels and not derelict in duty, and a steamer navigating a channel of sufficient width for her to move or stop at pleasure, there being no unusual stress of weather or superior force to drive the latter out of her course, the fault, under almost any circumstances, would be held to be with the steamer."

The "Bridgeport." (Citing the "Granite State." 3 Wall. 310.)

We submit that no case is made out here by this ship which takes the case out of this category, and that the decree should be affirmed with costs, interest and damages.

BENEDICT & BENEDICT,

Proctors for Appellees.

R. D. BENEDICT, *of Counsel.*